

Risks in Modern Industry



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PART ONE

*Industrial Insurance and Retiring
Allowances*



CIVIL SERVICE PENSIONS¹

BY HON. FRANKLIN MACVEAGH,
Secretary of the Treasury.

This is considered to be a materialistic age, and it is considered so because, beyond any question, it is so. But it is also a spiritual age. We make such tremendous material strides in this country and age—and do it so continuously and conspicuously—that we are apt to overlook the spiritual activities of the time, which are really far more extraordinary. Indeed, they are the most exceptional spiritual activities the world has ever seen. We are not usually compared favorably with the great period of Greece, nor with the early Renaissance of Italy, nor with the times of Elizabeth; but, after all, it is perhaps right to say that none of these great times of the spirit had such general spiritual life and activity as this particular materialistic age of ours.

The general interest in this subject of industrial insurance and retiring allowances is itself a concrete instance of the intellectual and moral activity—spiritual activity—of our immediate time. A very broad matter it is, this question of preventing the bread being taken away from the latter end of our lives. It is a great conception and purpose to complete civilization on that imperative side. It is a great conception of civilization, and it is a great conception of human obligation, this idea of providing industrial and other insurance, like protections and rewards. It is not merely humane; it is an uplifting of character and human standards in its promotion of thrift and foresight in the world. The widespread and acute interest in this question is very evident, and the activities in its behalf are also very widespread. In civil life, in industrial life, in the whole of the varied phases of our life this movement is taking root.

The one place where it is neglected, where the movement has no place, where as yet it has no life, is in the United States Government, and it is of that feature that I am going to speak to you

¹ The address of Secretary MacVeagh, as presiding officer at the opening session of the annual meeting of the Academy, April 7, 1911.

for a few minutes. The situation in the National Government is, so far as retiring allowances or any allowances or pensions are concerned, that we have a perfectly enormous war pension list, a list that is not even a credit to us. It never had a scientific or acknowledged basis from the beginning, although it had a very worthy purpose. It, however, has lost a great deal of that purpose, lost its patriotic quality to a great extent, and has become largely a political pension list. This amounts to from \$150,000,000 to \$160,000,000 a year. Outside of that list, which is mainly, of course, right, just and proper, but in a large measure also an abuse, we have listed for pensions the army and navy officers and enlisted men, the officers and men of the revenue cutter service, the federal judges and some of the public health service. Outside of the few judges and health officers, the whole civil list is left without any consideration whatever, without any protection, without any thought. That is a statement of the situation in our Federal Government.

It is high time and most important that a retiring allowance should be established for the civil service of the Federal Government. The Federal Government itself absolutely needs it. We hear all this current talk about economy and efficiency. We can go a certain length; I have gone a certain length myself in my own department, and am going a certain length, but I am tied up as everybody else is in any effort really to produce economy and efficiency, economy through efficiency, by lack of a retiring allowance for the civil service servants. You cannot throw these people out on the street when they have grown old in honorable service—you would not throw them out on the street, and we do not throw them out on the street, but that is the only alternative. The only thing to do is to throw the old men and old women out on the street, or keep them in employment with their partial efficiency. We accept the alternative of keeping them there with their partial efficiency. It is necessary not only to the Government to have a retiring system, but it is fair and necessary to the clerks and employes themselves. They, too, are entitled to consideration on the part of this Government, and we are the only national government in the world which does not have a retiring allowance for its civil servants. So it is due to them by the universal standards of great governments, as well as due to the government itself.

All the arguments are in favor of it. Every argument in favor

of old-age protection in any form, in favor of any form of industrial or other insurance applies here, every reason that seeks to protect a man or woman in old age anywhere, applies here to these people of our Federal Government.

Now what are the obstacles? My experience, you may be surprised to hear me say, is that Congress is a much more amenable body than it gets credit for being. The trouble with this matter is that there is no wide or great public interest demanding action from Congress. Among the clerks themselves there is nothing but disagreement; among the employes themselves there is disagreement over the method of protection; one set wants a straight pension and the other set a contributory system. As a matter of fact the contributory system is the only one that can or will ever be adopted, and it is the only one which ought to be adopted; but it is an obstacle to us who are trying to get something done by Congress that the employes are divided. They are divided and probably will be, as long as they are left wholly to themselves and to their own disagreement. What we want, I come here to say to you who create public sentiment and study scientific questions and have authority, is public interest and agitation. I have come here to say to you that the thing which is lacking in the propaganda at Washington is public interest throughout the country.

No evidence of this lack is more convincing than the fact that in your program here to-day you have not given a place or a thought to the question of what should be done for our 200,000 government employes. I am speaking to you about it, but you did not know what I was going to speak to you about, for my subject is not mentioned in your program. I did not know myself, very long in advance, what I was going to speak about. I was coming, however, to be with you. Some one hit upon a subject for me at the last moment, because of the fact, I suppose, that I had brought it forward in my report to Congress. This is a most illuminating program, a most delightful one, a most important one, and devoted wholly to the provisions for old age, but none of you ever thought about the 200,000 servants of the United States Government for whose old age nothing is being done, and about whose old age very few are thinking. I hope we shall all think about it.

RETIREMENT SYSTEMS FOR MUNICIPAL EMPLOYES

BY F. SPENCER BALDWIN, PH.D.,
Professor of Economics, Boston University.

The need of retirement systems for employes is generally recognized by far-sighted employers of labor. It is well understood nowadays that the practice of retaining on the pay-roll aged workers who can no longer render a fair equivalent for their wages is wasteful and demoralizing. The loss is twofold. In the first place, there is the direct loss involved in the payment of full wages to workers who are no longer reasonably efficient, and, in the second place, there is the indirect loss entailed by the slow pace set for the working force by the presence of worn-out veterans, and the consequent general demoralization of the service. On the other hand, it is certainly not a humane course to discharge employes who have grown old in the service and have not accumulated a sufficient amount to provide for their maintenance. Recognizing these considerations, many large corporations have in recent years introduced pension systems for their employes. The list of pensioning corporations is most impressive; it includes a large number of the leading railroads and industrial corporations of the country. It may be said that the provision of retirement allowances for employes has become a feature of the policy of the railroads and the trusts in dealing with the labor force.

The general nature of the leading schemes is substantially the same. Provision is made for the voluntary or compulsory retirement of employes at a certain age, with weekly or monthly allowance. The amount of the allowance is determined by the length of service and the wages of the employe. It is usually calculated on a basis of a certain percentage of the average wages for each year of service. The expenses of the pension system are commonly borne by the employer, without contribution from the employe. Often the pension system is combined with provision for sickness and accident insurance, organized on a contributory basis.

The reasons that have induced corporate employers to make provisions for the retirement of aged workers would seem to hold

good in the case of municipalities. Indeed, the considerations pointing to the expediency of establishing retirement systems have double force in the field of municipal employment. Here personal and political influences come into play to prevent the discharge of employes who have outlived their usefulness; the loss from the retention of inefficient veterans on the pay-roll is probably greater than in the case of the private corporations. Thus the general reasons of economy and efficiency which call for the establishment of retirement systems are re-enforced by special considerations in the field of municipal employment.

Notwithstanding the evident advantages of a retirement system, no American city has yet established a general plan of superannuation allowances for its employes. The comparatively few pension plans now in operation in this field provide only for special classes of employes, chiefly firemen, policemen and teachers. A circular of inquiry sent out by the writer as investigator for the recent Massachusetts Commission on Old-age Pensions to the 33 cities in Massachusetts and to 94 cities in the country outside of Massachusetts, having a population of 25,000 or over, brought 86 replies. Of the 86 cities from which replies were received, 43 reported that no pensions of any kind were paid to public employes. Of the 43 cities having pension schemes of some sort, 38 cities pension policemen, 37 cities pension firemen and 12 cities pension teachers. Grouping the 43 cities according to the extent of the pension provisions, it appears that 10 of the cities have pension schemes for policemen, firemen and teachers, 23 for policemen and firemen, 2 for policemen and teachers, 5 for firemen alone, and 4 for policemen alone.

In 1910 the Massachusetts Legislature passed a general enabling act authorizing cities and towns to establish retirement systems for their employes. This is the first law of the kind to be placed on the statute books of an American state. No municipality, however, has yet taken advantage of the permissive provisions of this measure.

In contrast with American cities in this respect, European cities have generally adopted pension schemes of one sort or another for their employes. Indeed, it is a striking commentary on the backwardness of American municipal administration as compared with European that the leading cities of Europe have all established general retirement systems for their employes, while no American city thus far has taken such action.

There is a wide variety of detail in the provisions of municipal pension systems in Europe. Information concerning the pension provisions in 24 of the leading cities of Great Britain and the European continent was collected by the Massachusetts Commission, to which reference has just been made. It appears that the age of retirement in these schemes is variously fixed at 60, 65 and 70. The age 60 is the one selected in ten cases, the age of 65 in eight, and the age 70 in one. In the remaining four schemes retirement is conditional upon the completion of a certain period of service and not upon the attainment of a specified age. The schemes are about equally divided between the contributory and the non-contributory principle. Thirteen are contributory; that is, the expense is borne, in part, at least, by the participating employes. Eleven are wholly non-contributory; that is, the cost is defrayed entirely by the city. The amount of the employe's contributions varies from $1\frac{1}{2}$ to $5\frac{1}{2}$ per cent. of the wages or salary; the usual percentage is three. The amount of the pension is usually a certain proportion of the wages or salary of the employe, according to the length of service; the limits range from one-sixth to seven-tenths of the salary. All but two of the schemes provide for retirement in the event of incapacity, regardless of age.

The first question that arises in drawing up any plan of retirement allowances is whether the system should be contributory or non-contributory. Most existing pension systems in this country, including the corporation plans, as well as the special schemes for policemen, firemen and teachers, are wholly non-contributory; no part of the expense is assessed upon the beneficiaries. The wisdom of such non-contributory pension schemes is extremely doubtful. In particular, municipal employes receive good wages, and ought to be called upon to bear at least some part of the expense of a retirement system. The non-contributory principle enormously increases the expense of providing pensions. The effect of purely gratuitous pensions on the beneficiaries themselves is likely to be somewhat demoralizing. And the payment of non-contributory pensions to municipal employes tends to encourage agitation for the introduction of general state pension schemes for the aged. For these reasons it seems desirable that whatever may be done in the future in the way of providing retirement allowances for municipal employes should be based on the contributory principle.

On the other hand, it is just and reasonable that the municipalities should contribute something to the fund out of which allowances to superannuated employes are paid. Such contributions are to be regarded in the nature of extra compensation for long, faithful and efficient service. That is, in addition to the payment of current wages the municipality may properly undertake to pay a special extra allowance to workers who remain in the service a certain period of years and reach a certain age, meanwhile contributing to a fund for the provision of annuities for themselves in the event of their retirement. This is the logical justification for contributions to pension funds by employers of labor, whether private, corporate or public. The equitable arrangement in the case of municipal pensions appears, therefore, to be a division of the expense between the municipality and the employes on a basis of joint contributions.

The retirement plan embodied in the act passed by the Massachusetts Legislature in 1910 is based on this principle of joint contributions. The employes are to be assessed regularly on their wages and salaries at the rate of not less than one nor more than five, per cent., to provide a fund out of which annuities shall be paid to those retired from the service. Exception is made, however, in the case of employes receiving more than \$30 per week; such employes are not to be assessed on the excess above that amount, but simply on the flat basis of \$30 per week. The annuity received by each employe retired under the provisions of the act is such amount as his contributions during his period of service, accumulated with interest at 3 per cent. compounded semi-annually, will provide for him according to actuarial computation. In addition to the annuity, the employe is to receive in each case a pension of equivalent amount paid from the public treasury. In no case is the total allowance, including annuity and pension, to be less than \$200 per year, or more than one-half the average wages or salary during the ten years prior to retirement.

The age of voluntary retirement is fixed at 60 years; that is, employes who have reached that age may retire or may be retired by the board intrusted with the administration of the act. The age of compulsory retirement is fixed at 70 years; that is, employes who have reached that age must retire or be retired. An additional requirement of 15 years' continuous service is laid down for employes

retiring or retired at the age of 60. Furthermore, employes who have served 35 years continuously may retire or be retired at any age.

Participation in the retirement system is optional for present employes. It is obligatory for future employes, those entering the service after the establishment of the retirement system, with the exception of officers elected by popular vote and employes eligible for a pension from the municipality for any reason other than membership in the association.

In addition to pensions for subsequent service, pensions for prior service are provided; that is, employes in the service when the retirement plan is established are to receive, in addition to the pension which they may secure through their contributions to the annuity fund, an extra allowance equal to the amount of the annuity that they might have earned for themselves had the scheme been in operation when they entered the service and had they made contributions to the fund from that time in proportion to their current wages or salaries. It should be noted, further, that employes who had reached the age of 60 years when the retirement system was established, and employes who had reached the age of 55 years at that date and also became members of the association, may be retired with pensions for prior service without having completed the otherwise required service period of 15 years. Employes who had reached that age and declined to join the association may be retired with the minimum allowance provided in the act.

Provision is made for refunding the contributions of employes who withdraw from the service without becoming entitled to a pension. In case a member of the association leaves employment for any cause other than death before becoming entitled to a pension, there shall be refunded to him all the money that has been paid in by him, with regular interest. In case a member of the association dies before becoming entitled to a pension, there shall be paid to his legal representatives all the money that has been paid in by him, with such interest as may have been earned on the deposits.

The administration of the system is intrusted to a Board of Retirement, consisting of the city or town treasurer, *ex officio*, another member chosen by the Retirement Association composed of the participating employes, and a third member selected by the first two, or appointed by the mayor or the chairman of the Board of

Selectmen in case of their failure to agree. The Insurance Department of the Commonwealth is given certain powers of supervision with reference to the actuarial and administrative features of the system.

Thus far the case in favor of the establishment of some system of retirement allowances for municipal employes has been stated without direct reference to objections that have been urged against the proposed policy. It remains now to consider some of these objections. The economy of a pension system for municipal employes is not universally admitted. In general, the objection has been raised that the conditions of the municipal service are essentially different from those of the private service of the railroad and industrial corporations, and that consequently, while it may be sound policy for the latter to adopt pension systems, it would be unwise and wasteful in the case of the cities. Municipal administration, it is said, involves financing out of other people's pockets. The natural tendency, therefore, is toward extravagance and corruption. The element of politics must be taken into account. The establishment of a general retirement system for employes would furnish corrupt politicians new means of exploiting the taxpayers. For example, men might be placed on the pay-roll and then retired promptly to make room for others. Thus the pension roll might be padded like the pay-roll.

The force of this argument depends on the nature of the retirement system adopted and the safeguards thrown about its administration. The objection carries weight against any loosely drawn pension measure giving large powers to the officials entrusted with its administration, and permitting political influences to enter into the management of the system. It does not hold, however, against the plan embodied in the Massachusetts act. In this measure the conditions of retirement are definitely prescribed. In the case of employes entering the service after the system is established, retirement can take place only after the completion of 15 years of continuous service. The employes, furthermore, contribute to the retirement fund, and the size of the retirement allowance in each case depends upon the length of service and the amount of contribution. The system thus affords no chance to hand out gratuities indiscriminately. It may also be pointed out that the members of the Board of Retirement are to serve without pay. Moreover, the

approval of the municipal council is required in the case of expenditures incurred by the board. Again, the make-up of the board, as provided for in the act, is not likely to be determined by political influences. Finally, the system is placed under the supervision of the State Department of Insurance as regards its actuarial and administrative features. The argument in question is thus deprived of its force by the provisions of the Massachusetts plan.

A popular objection to municipal pensions, which influences many voters and taxpayers to oppose the establishment of retirement systems for city employes, emphasizes the injustice of taxing workers in general for the benefit of a special class of employes. The attitude of the man who urges this objection is that the class of municipal employes is a peculiarly favored one; its members draw good pay in easy berths. They ought to take care of themselves in old age. "Why should I be taxed," the objector asks, "in order to provide pensions for this favored class?" If pensions are to be granted at all, it is contended, they ought to be passed around to workers of all classes. It is unjust to single out any special group of beneficiaries. In this connection there appears to be a particularly strong objection in the minds of many opponents of municipal pensions to the payment of retirement allowances to clerks and salaried employes. Some who approve of retirement allowances for common laborers earning small wages, strenuously object to the extension of the benefits of the retirement system to better paid employes. It is argued, in support of this objection, that the handicap of age is much less in the case of clerical employes than in the case of manual laborers. It is said that an old man can push a pen when he could not swing a pick effectively.

The latter consideration contains a measure of truth; but the handicap of inefficiency is certainly there in the case of a clerical staff made up largely of old men, even if the loss on this account is less serious. Moreover, even if salaried employes ought to be expected to accumulate enough for their maintenance in old age, they do not, as a matter of fact, usually make such provision. The fact that an employe draws a good salary is no guarantee that he will not be found entirely resourceless when he reaches the age at which retirement in the interests of the service should take place. The city is confronted in this case with the dilemma of discharging a worn-out employe without means of support or retaining him to the disadvantage of the service.

As regards the fundamental objection that it is an injustice to tax the workers in general for the benefit of public employes in particular, it is to be observed that this contention rests on the assumption that a retirement system must involve an additional burden on the taxpayers. This assumption is entirely gratuitous. It would certainly not hold true of a properly organized contributory system with a large share of the expense borne by the employes. Private corporations even regard a wholly non-contributory system, in which the pensions are paid entirely by the employer, as economical. It is reasonably certain that a contributory system, such as is proposed in the Massachusetts act, would, in the long run, save money for the taxpayers. Such saving would be effected in three ways: First, through elimination of the direct waste of money paid to aged employes who had outlived their usefulness; second, through stoppage of the indirect loss entailed by the slow pace forced upon the rest of the workers by the presence of inefficient veterans; third, through the positive gain that would result from the substitution of younger men for the superannuated employes, from the increased efficiency promoted by the retirement system, and, possibly, from the attraction of a higher grade of men into the municipal service.

The Massachusetts plan, in particular, has certain features that should commend it strongly to persons viewing this question from the standpoint of the good of the public service or the interests of the taxpaying public. It is not a straight pension scheme, but is more accurately described as a plan of assisted age insurance for municipal employes, to be financed by joint contributions of the two parties concerned. In this respect it has distinct advantages over the pension schemes for policemen, firemen and teachers now in force, and the retirement systems of most railroad and industrial corporations. The beneficiaries are not offered a sheer gratuity or simple hand-out, but a retirement allowance provided in large part by their own contributions from their current earnings. There is no sentiment or philanthropy in the proposed plan; it is a plain business proposition. The city is not asked to "take care of" its employes for their benefit alone, but rather to take measures to promote a higher degree of economy and efficiency in the municipal service. Unquestionably, the system would, in the long run, diminish rather than increase the taxpayers' burden. Not the least of

the advantages promised by the system is that it would put an end to special legislation in this field by providing a comprehensive and logical solution of the retirement problem, which has thus far been dealt with only in piecemeal fashion. The multiplication of special pension acts for various classes of municipal employes, often inconsistent and contradictory in their provisions, involves confusion and injustice. The wise course is to adopt a system that will make provision for the entire force of employes once for all. The adoption of such a system is an essential condition for the development of a thoroughly satisfactory municipal service. Until this course is taken the service will continue to be handicapped by the dead weight of inefficiency, resulting from the continuance in employment of large numbers of worn-out workers.

CASUALTY INSURANCE COMPANIES AND EMPLOYERS' LIABILITY LEGISLATION

BY EDWIN W. DELEON,
President, Casualty Company of America, New York.

At the Conference of Commissions on Compensation for Industrial Accidents, held at Chicago, on November 10 to 12, 1910, the chairman of the New York commission summed up in a sentence the objects to be attained by all such commissions and the ultimate purpose of all such legislation, with the statement that what they tried to do was to pass a constitutional law, in which the cost for insurance would not be prohibitive and one that would not handicap the industries of the State in competition with those of other States. In other words, the most important practical questions that must be considered in any legislation of this character are constitutionality, competition and cost. I am not unmindful of the sentimental side of this great subject or of the ethical and sociological considerations involved in the doctrine of compensation *versus* litigation. It is mere idle repetition to say that the principles of workmen's compensation are founded upon humanity and justice, and that there is no longer any place among the enlightened nations of the earth for the antiquated, iniquitous doctrines of employers' liability that have survived the onward march of civilization and progress in this country alone. These ancient legal makeshifts, applicable to an age when the relations of capital to labor were comparatively simple, and the hazards of industry relatively light, must inevitably give way in the evolution of the world's development to the more just, humane and rational principle of *sic utere tuo, ut alienum non laedas*, that becomes the keystone upon which our industrial structures shall be reared in the future.

This brings us directly to the query, "What is the attitude of casualty insurance companies toward legislation affecting employers' liability and workmen's compensation?"

Broadly speaking, legislation is the *bête noir* of insurance companies in general, and of casualty insurance companies in particular. During 1910, eighteen legislatures considered 594 bills affecting

casualty insurance, of which 119 were enacted into law. Five States—New York, New Jersey, Illinois, Ohio and Rhode Island—and the United States Congress appointed commissions to investigate and report on the subject of employers' liability and workmen's compensation for industrial accidents. In addition to the States named, commissions are now at work in Massachusetts, Minnesota, Missouri, Wisconsin and Washington. In every case, the casualty insurance companies have contributed their share in helping to solve the problems confronting these commissions. Officials of the companies have appeared at the hearings and have frankly and fully expressed their views, based upon actual experience of years in the practical working out of many of the questions involved. Statistics have been freely furnished to corroborate the statements made. In every way the companies have shown not only a keen desire to learn how their mistakes might be corrected, but a ready spirit of co-operation in arriving at the basic principles for liability and compensation laws.

It is, perhaps, not too much to say that these commissions would be seriously handicapped in their work, and their efficiency greatly impaired, except for the practical help and valuable information furnished by the casualty insurance companies. The one great desideratum of the companies in all this legislation is the conservation of industrial efficiency, and the most adequate protection to employers and employees at the lowest insurance cost consistent with sound business principles.

It is a far cry, however, from the first labor legislation in the civilized world enacted one hundred years ago in England with the help of Lord Shaftesbury and Robert Owen to the present-day systems of regulating hazardous occupations, safeguarding dangerous machinery, limiting hours of labor and periodical inspecting of plants. In the great progress made in labor legislation during the last quarter of a century, the casualty insurance companies, since the organization of the first company, nearly twenty-five years ago, have been useful and important factors. The introduction of hazardous and complicated machinery, the "high pressure" methods necessary in the stress of competition, and the almost universal change from the individual employer to corporate control by the great "captains of industry," have effected radical changes in the relations of employers and employees, and have created a situation far removed from

the relatively simple conditions that existed when the common law doctrines of employers' liability were first established.

In this great evolution, that at the present time may be called revolution, the casualty insurance companies have played a conspicuous part. Some idea of the magnitude of their operations during eight years, ending December 31, 1909, may be gained from the following figures:

Number of policies issued	1,555,014
Premiums received and earned	\$124,705,322
Number of notices of injuries received	2,326,606
Amount paid on account of injuries	\$62,853,595
Average cost of each injury	\$27.01
Number of suits settled for account of policy-holders	60,986
Amounts paid for suits settled	\$29,263,889
Average cost of each suit settled	\$479.84
Reserve for unsettled suits	\$4,440,579

In the consideration of these great questions, the attitude of the state is paternal; that of the sociologist and the economist is idealistic; that of the reformer is benevolent, while the attitude of the casualty insurance company is remedial and preventive. It is said that social reformers in their strenuous advocacy of improved social conditions have mainly not in mind an abstract society for whose sake these improvements are to be made, but they think largely of the individual; of the high death rate of the babies from poisoned milk or mothers' ignorance; of the young girl, radiant with health and youth the early victim of a consumptive's grave; of the fatal industrial accident to the wage-earner that removes forever the head of the family, and at once transforms the self-supporting, self-respecting social unit into a shattered and dependent fragment of society, to be helped, and, if possible, rehabilitated in time above the need of charity. One of the nation's leading social reformers has recently said: "There is no merit in feeling for the woes of humanity if we do not, under the impulse of that sentiment, direct our energies to an understanding of the cause of their sufferings and to practical remedies. The medical diagnostician and the clinical psychologist are as necessary to the social worker as the sanitarian, the employment agency and the relief fund. Individual and family

rehabilitation is our specific task, and discriminating and thorough knowledge of individuals is a fundamental means to that end. We must know to what motives particular individuals will respond, what are their special weaknesses and dangers, what are their strong points and their exceptional capacities."

It is along these general lines that the casualty insurance companies are working in connection with the enactment of proposed legislation affecting employers' liability and workmen's compensation.

The difficulties of securing such legislation in the United States are too well understood to need any explanation here. While the tendency on the continent of Europe is unmistakably to substitute a system of state insurance for the liability of the employer for negligence, there is a great contrast between the facility of social legislation of this sort under the flexible constitution of a monarchial government like Great Britain, and the difficulty of securing similar legislation in forty-six sovereign states; each with its own rigid constitution and with the local conditions often designed to impede the passage of effective labor legislation. No better illustration of this is needed than the recent unanimous decision of the New York Court of Appeals declaring unconstitutional the workmen's compensation law of that state, the first legislation of the sort ever enacted in this country. The court held that the act deprives the employer of his property, without due process of law, in violation of the federal and state constitutions, and not justifiable under the police power of the state. Justice Werner wrote the opinion, in which all the members of the court concurred, and said in part: "Under our form of government, courts must regard all economic, philosophical and moral theories, however attractive and desirable they may be, as subordinate to the primary question whether they can be moulded into statutes without infringing upon the letter or spirit of our written Constitution." In discussing portions of the act that are regarded as clearly or probably within the legislative power, Justice Werner said: "We entertain an earnest desire to present no purely technical or hypercritical obstacles to any plan for the beneficent reformation of a branch of our jurisprudence, in which it must be conceded, reform is a 'consummation devoutly to be wished.'"

Prof. Henry W. Farnam, of Yale University, President of the American Association for Labor Legislation, in an address delivered

at the third annual meeting of the association, in December, 1909, stated that the economic ideal of the United States is perhaps most concisely expressed in that part of the preamble of the federal constitution which gives as one of the objects, "to promote the general welfare and secure the blessings of liberty to ourselves and our posterity."

There is serious question, however, whether "economic, philosophical and moral theories," however sound, or the commendable impulses of benevolence or charity, will justify in this country, the compensation laws that have been adopted by some constitutional monarchies. In some of those countries, working men are often treated as a sort of dependent and somewhat irresponsible class, requiring the paternal care of the state. No such distinctions exist or are encouraged here. Our laws are presumed to treat all those subject to the law with equal consideration and not to impose upon one class different responsibilities or obligations than upon another, but to hold each responsible for the consequences of his own acts, and not for the acts of others. Justice Werner emphasizes this feature of our jurisprudence and says: "We are unlike any of the countries whose industrial laws are referred to as models for our guidance. Practically all of these countries are so-called constitutional monarchies, in which, as in England, there is no written constitution, and the Parliament or law-making body is practically supreme. In our country, the federal and state constitutions are the charters which mark the extent and the limitations of legislative power; and while it is true that the rigidity of the written constitution may at times prove a hindrance to the march of progress, yet more often its stability protects the people against the frequent and violent fluctuation of that which, for want of a better name, we call public opinion."

It must also be borne in mind that commerce and business do not recognize state lines, and that in the enactment of legislation of this character, a manufacturer is confronted with competitors from other states, who may be subjected to very different legislation. Under such complex conditions, uniform state legislation would be highly desirable, although extremely difficult to accomplish, owing to the difference in local conditions, and, therefore, in local public opinion. The states that are newer in manufacturing and industrial growth are not so ready to adopt legislation that has been approved

and is readily enforced in the older states. Enlightened public opinion will, however, in the long run, come to realize that the regulation of the conditions of employment and adequate compensation for injuries of occupation under some fair optional plan are not only demanded by the dictates of justice and humanity, and are for the best interests of the whole community, but that from a purely economic point of view they mean increased productiveness, a higher degree of efficiency of employes and greater profits for the employer.

The attitude of the casualty insurance companies in the enactment of such legislation is helpful and hopeful. The companies have been criticised by some for the increase of liability rates in states where employers' liability laws have been greatly extended and enlarged. In justice to the companies, let it be said that much of the increase is due to uncertainty and to the necessity of fixing rates to cover the most extreme and possibly unreasonable construction that the courts may place upon such new laws. Under most employers' liability acts as now amended the employer is practically an insurer of his workmen and is an insurer for an indefinite amount limited only by the caprice of a jury. If this understanding of the enormous responsibility of employers under present laws is sustained by the courts it is extremely doubtful whether the increased rates of premiums are sufficient to enable the companies to carry on the business of liability insurance in future without a heavy loss.

In the state of New York, for example, the legislature of 1910 attempted to do what no legislative body in Europe has yet done; it enacted at the same time two laws, one a wide open employers' liability act, and the other a workmen's compensation law, and then gave to injured employes the right to choose whichever one was regarded as the more favorable.

The repeal of the compensation law does not, however, help the companies to any great extent, for the two measures have not in practice achieved the great purpose for which they were designed—of replacing the old idea of employers' liability with the new principle of workmen's compensation. Experience has shown that few workmen will demand the relatively small sum due them under the compensation law in preference to a suit under the employers' liability act with the chance of recovering a large sum in damages from a jury.

The present situation in many of our states requires the utmost

caution in the work of the underwriters, for the casualty insurance companies have an important trust in their keeping and must create and maintain a fund that will be amply sufficient to meet the demands of the great new burdens unloaded upon them by employers, and they must also be ready and able to provide adequate compensation to injured employes. It would be nothing short of a national calamity if one of the leading companies should find that it had not procured rates sufficient to cover the new and greatly increased obligations created by the laws recently enacted. The insurance companies have been accused of secretly, if not openly, advocating the passage of some of these laws, as an excuse for raising rates, and adding to the already great profits that they are assumed, however erroneously, to make out of their patrons. As a matter of fact, the people make the laws, and the companies make the rates, but the solution of the problems created by the laws is left to the insurance companies. Some one has said that you cannot lower the mortality in a community by abusing the undertaker. The companies are doing the best they can to meet the trying conditions that constantly arise through the enactment of new laws. They do not waste time in criticising these measures or in emphasizing their defects, but by an honest concerted effort they are striving to find the best way out for the benefit of all concerned. Above all, the casualty insurance companies do not desire to perpetuate the present unsatisfactory system of compensating workmen for injuries sustained, and will welcome any legislation that provides a fixed definite scale of compensation for occupational injuries, which will enable the companies to adjust the rates of premium upon a basis that has for its ultimate purpose the elevation of the business of liability insurance to the highest plane of utility and permanence.

In closing, I am reminded of the words of one of our best known, best beloved and most eminent social workers, Jane Addams, on the human conservation in industry: "We must insist that the livelihood of the laborer shall not be beaten down below the level of efficient citizenship. From the human standpoint, there is an obligation upon charity to discover how much of its material comes as the result of social neglect, remedial incapacity and the lack of industrial safeguards. Is it because our modern industrialism is so new, that we have been slow to connect it with the poverty all about us? The socialists talk constantly of the relation of economic wrong

to destitution, and point out the connection between industrial mal-adjustment and individual poverty, but the study of social conditions, the obligation to eradicate poverty cannot belong to one political party, nor to one economic school, and after all, it was not a socialist, but that ancient friend of the poor, St. Augustine, who said: "Thou givest bread to the hungry, but better were it that none hungered and thou hadst none to give him."

SOME FEATURES OF OBLIGATORY INDUSTRIAL INSURANCE

BY JAMES HARRINGTON BOYD, D.Sc.,
Chairman of the Employers' Liability Commission of Ohio.

The legislatures of fourteen states have passed statutes abolishing the fellow-servant rule.¹ Seven or more of the states have modified one or more of the common law defenses, either by statute or by decision of their courts, along the following lines:² (1) Adopting the doctrine of comparative negligence, which has always been the rule and common law in certain states, like Georgia and in admiralty causes in the federal courts; (2) changing the burden of proof of contributory negligence from the plaintiff to the defendant (as has always been the rule in the federal court and some states), as for example, in Ohio and Oregon; (3) taking away the defense of assumption of risk when the risk assumed was caused by the fault or negligence of the employer.

The tendency of the development of the statutory law during the last few years, relative to the recovery of compensation for injuries to workingmen which arise out of their employment, is to wipe out the common law defenses, leaving the action based solely upon the fault of the employer.

The chief sources of the friction between employer and employe, the rapid increase in the demands for charitable relief and care for delinquent children, and the corresponding demand for compensation for all personal injuries which workingmen receive in the due course of their employment, continue to exist largely because compensation for injuries can only be obtained when the employe can prove *fault* on the part of his employer.

Fault or negligence of the employer can be proven in much less than 20 per cent. of the cases, and, what is most startling, no matter how careful the employe and the employer are, or how high the efficiency of the state may rise in the prevention of accidents, the cause of 50 to 55 per cent. of all accidents to employes is

¹ Arkansas, Colorado, Florida, Georgia (1885), Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, North Carolina, Oklahoma, South Dakota and Missouri.

² California, Mississippi, Ohio, Oregon, South Carolina, Utah, Virginia.

solely due to the natural hazard or dangers of the business—the combined negligence of the employe and the employer. On the other hand, the cause of 16.8 per cent. of all accidents are traceable to the negligence of the employers, and the cause of 28.9 per cent of all accidents is attributable to the negligence of the employes.³ Under the practical operations of the common law remedy, based upon fault, it is impossible to prove the employers negligent in anything like 16.8 per cent. of the cases of injuries to employes. For that reason, the old theory of making fault the basis for an action to compensation for injured workmen has been abandoned.

The only available statistics in the United States showing how much compensation the dependents of workmen killed or workmen injured receive under the present laws in the United States are in the reports of the investigations made by the Russell Sage Foundation in Allegheny County, Pa., 1906 and 1907; the investigations of the Employers' Liability Commission of New York State, and those of the Liability Commission of Illinois, during the years 1909-1910, and the investigations, now about complete, which have been made by the experts of the Employers' Liability Commission of Ohio in Cuyahoga County (Cleveland), during the months of November and December, 1910, and January and February, 1911, covering fatal and non-fatal accidents for the period of 1905-1910. On account of the great importance of the results of these investigations in framing laws providing for industrial insurance to workmen, a *résumé* of their results is given.

New York Statistics

During the years 1907-1908, ten insurance companies, which keep employers' liability records, doing business in the state of New York, received in premiums from employers, \$23,524,000; they paid to injured employes, \$8,560,000; waste, \$14,964,000.⁴

It should further be added that ten liability insurance companies settled 414,000 cases in the three years prior to 1910 in New York by making payments in any sum at the rate of one payment in eight cases or in 12½ per cent of the cases.—(N. Y. Report p. 25.)

Nothing could more strikingly set forth the waste of the present system than the fact that only 36.34 per cent. of what employers

³ Employers' Liability Report of Ohio, Part I, page xxix.

⁴ Employers' Liability Commission of New York, First Report, page 31.

pay in premiums for liability insurance is paid in settlement of claims and suits. Thus, for every \$100 paid out by employers for protection against liability to their injured workmen, less than \$37 is paid to those workmen; \$63 goes to pay the salaries of attorneys and claim agents, whose business it is to defeat the claims of the injured, to the cost of soliciting business, to the cost of administration, to court costs and to profit. Out of this 36.34 per cent. the injured employe must pay his attorney. The same report shows that the attorneys get 36.3 per cent. of what is paid to the injured employees.

This investigation covers forty-six cases, where the recovery was about \$1500 each. In small recoveries the attorney fees take a larger proportion. This report shows that somewhere between 20 and 25 per cent. of the money paid by the employing class, actually passes to the injured workingmen for their dependent families in death cases.

The proportions of the loss borne by employers in injury cases does not differ greatly from that in death cases. Thus, out of 388 injury cases of the married men alone, 56 per cent. receive no compensation; of single men contributing to the support of others, 69 per cent. receive no compensation; single men, without dependents, 80 per cent. receive no compensation.

*Russell Sage Foundation Investigations in Allegheny County,
Pennsylvania*

The investigations recently conducted in Allegheny County, Pa., under the direction of the Pittsburgh Survey, showed that out of 355 cases of men killed in industrial accidents, all of whom were contributing to the support of others, and two-thirds of whom were married, 89 of the families left received not a dollar of compensation from the employer, 113 families received not more than \$100, 61 families received something more than this \$100, but not more than \$500. In other words, 57 per cent. of these families were left by their employers to bear the entire burden of the income loss, and, granting that all unknown amounts would be decided for the plaintiff, only 27 per cent. received in compensation for the death of a regular income provider more than \$500, a sum which would approximate one year's income of the lowest paid of the workmen killed.⁵

*First Report of the Employers' Liability Commission of New York,
page 31.

Wisconsin Statistics

The Wisconsin Bureau of Labor and Industrial Statistics reports that in 306 non-fatal cases in which reports were received by mail from workmen while at work the compensation was as follows:⁶

	Cases.	Per Cent.
Received nothing from employers	72	23.5
Received amount of doctor's bills only.....	99	32.4
Received amount of part of doctor's bills	15	4.9
Received something in addition to doctor's bills....	91	29.7
Received something, but not doctor's bills.....	29	9.5
<hr/>	<hr/>	<hr/>
Total	306	100.00

In two-thirds of the cases, part or all of the doctor's bills were paid; in less than a third was anything more paid, and in about one-fourth of the cases nothing whatever was paid.

In 131 non-fatal cases in Wisconsin, concerning which reports were secured by factory inspectors, the following disposition was made:

	Cases.	Per Cent.
Received nothing from employer	28	21.37
Received doctor's bills only	56	42.75
Received something in addition to doctor's bills....	10	7.63
Received something, but not doctor's bills.....	34	25.96
Not settled	3	2.29
<hr/>	<hr/>	<hr/>
Total	131	100.00

Illinois Statistics

The Employers' Liability Commission of the State of Illinois has recently made a report on its investigation of industrial accidents and employers' liability. More than 5000 individual accidents were investigated and recorded, together with comparative figures and analysis. The results of the investigations of the Illinois Commission are given by Edwin R. Wright, secretary of the Commission, and president of the Illinois Federation of Labor.

Six hundred and fourteen fatal accidents were recorded. The families of 214 of these workers received nothing in return for the loss of the breadwinner. One hundred and eleven damage suits

*First Report of the Employers' Liability Commission of New York, page 31.

are pending in court. Twenty-four cases have been settled through court proceedings. Two hundred and eighty-one families settled directly with the employer.

Skilled railroad employees, in settlement for death claims, averaged	
about	\$1,000.00
Steel workers	874.00
Railroad laborers	617.00
Skilled building tradesmen	348.00
Skilled electric railway employes	310.00
Unclassified workingmen	311.00
Miscellaneous trades	292.00
Packing house employes	234.00
General laborers	154.00
Mine workers	155.00
Electric railway laborers	75.00

Of every 100 industrial accidents, 15 go to court, 7 are lost and 8 are won. Ninety-two injuries out of every 100 receive no compensation. (This includes both fatal and non-fatal accidents.)

There have been 53 fatal cases of recent date. In fatal cases, the usual defenses of the employers—the fellow-servant doctrine, assumption of risks, etc.—did not apply, or there would have been no recovery at all. For these—the very pick of industrial cases—the average recovery for death was only \$1877.36, of this an average amount of \$740.95 was paid to attorneys or expended on court fees, etc., leaving an actual payment of \$1126.41 to the family of the dead worker; 34 widows were compelled to seek employment and 65 children left school to help keep the wolf from the door.

Germany and England

The German state insurance during the twenty years ending in 1905 required payments amounting to \$802,000,000. Of this sum, \$555,750,000 were paid on account of sickness insurance; \$232,750,000 were paid on account of accidents, and \$13,500,000 paid on account of invalidism and old age. To the fund necessary to make these payments, the employer contributed \$424,500,000. The employes contributed \$377,000,000, and the Imperial Government paid the cost of administration and a small portion of the funds necessary to take care of invalidism and old-age pensions (50 marks in each case insured).

The general rules in respect to the raising of the insurance fund are that the employes should pay two-thirds of the fund necessary to take care of sick insurance, which lasts for thirteen weeks, and the employers pay one-third. In the case of accident insurance, the employers pay 85 per cent. and the employes 15 per cent. In the case of invalidism and old-age insurance, the Imperial Government pays \$12.50 for each person injured, and the remainder of the fund is paid half and half by the employers and employes. The German plan in 1907 had 27,172,000 workingmen insured against sickness, accidents and old age, out of a population of 62,000,000 people.

The English plan, in 1908, provided for the insurance of 13,000,000 workingmen. In case of death, the compensation paid is, at most, three years' wages, £300 or \$1460, with a minimum payment of three years' wages at £150 or \$730. In case of disability lasting longer than one week, the compensation paid is one half-week's average wage, not to exceed \$4.87, as long as the disability lasts. Responsibility for the payment of the compensation rests solely on the employer, and employees are not required to insure.

In both the German and English plans the rules of contributory negligence, assumption of risk, and the fellow-servant rules are abolished, and the only kind of negligence recognized is that of malicious negligence on the part of the employer or employee.

The statistics of the United States show that over 50 per cent. of all industrial accidents are due to the inherent dangers and risks of the industrial business, that not to exceed 20 per cent. of all these accidents are due to, or attributable entirely to, the negligence of the employer, and that, at most, 25½ per cent. are attributable solely to the negligence of the employe. *The common law furnishes no plan of relief, except where it can be proven that the defendant is at fault. Therefore, the common law affords no relief for something like 80 per cent. of all workingmen injured and killed in the United States. The lowest estimate of the number of persons injured and killed in industrial accidents in 1909 is 536,000 people.*

Montana, in 1910, put in operation a mutual plan of insurance for coal miners. The compensation paid the wife and children or dependents of a miner killed in the due course of his employment is \$3000. In case the miner is totally disabled by an injury, he is paid \$1 for each working day during disability. The loss of an eye, or limb, caused by accident to a miner while employed in or

about a mine is compensated for in the sum of \$1000. The compensations are paid from a fund which is administered by the auditor of state. The operators contribute to this fund according to the quantity of coal mined, and are authorized by law to deduct 1 per cent. from the wages due the miners.

The New York act of 1910 provided for a compensation to workmen ranging from \$1500 to \$3000 in case of death. Other injuries were proportionately compensated. These payments were to be borne by the employer whether he was or was not at fault. The injured workman had the choice of suing at law or of taking the compensation. The Appellate Court of New York has held this law unconstitutional.

The employers' liability commissions of Washington, Minnesota, Wisconsin and Ohio have reported acts to their respective legislatures recommending plans for compensation of workingmen for injuries without regard to fault. The Washington act provides a plan of obligatory mutual insurance, the state being the custodian of the fund. Compensation varies from \$1500 to \$4000 in case of death or total disability. This law has been enacted. Non-fatal injuries are compensated for at about 60 per cent. of the impairment of wages of the workingmen injured. The act defines a large class of dangerous employments. The employe waives the right to sue, and is compelled to accept the compensation provided by the act in lieu of all other remedies. The Washington plan also stipulates that the employer shall contribute to the first-aid fund 4 cents for each workday that an employe worked, which takes care of the injured workingman for the first three weeks following the injury. The law authorizes the employer to deduct 2 cents each workday from the wages of his employe.

The Minnesota plan is based upon state insurance and is applicable to all dangerous employments. The compensations are liberal, ranging from \$1500 to \$3000, in case of death. The compensation for workingmen partially disabled is 50 per cent. of the impairment of their earning power. The Wisconsin act is optional and follows the New York act in its principles and amounts of compensation.

New Jersey, in 1911, enacted a comprehensive employers' liability and workingmen's compensation law.

Massachusetts, Connecticut, Missouri and Texas have com-

missions studying the problem. Many of the other state legislatures are considering bills to abolish or largely modify the common law defenses.

The International Harvester Company has put into operation a voluntary plan of industrial insurance which provides compensation varying in amount from doctor's bills to \$4000. The employees are not obliged to contribute anything to the fund, and compensations are paid without regard to fault. The acceptance of the compensation releases the company from a suit at law.

These numerous state commissions are endeavoring to answer the question, What plan of compensation shall be substituted for the old common law action based upon the fault of the employer? The evidence indicates that the most just and efficient remedy is obligatory industrial insurance, such as prevails in Germany.

WORKINGMEN'S COMPENSATION IN THE BREWING INDUSTRY

By LOUIS B. SCHRAM,

Chairman of the Labor Committee, United States Brewers' Association,
Brooklyn, N. Y.

I have no fault to find with those who are ready, for a consideration, to undertake to carry the burden which our present laws throw upon the employe, but I do have fault to find with a system of laws which throws upon the workman the entire burden of the risk of his employment. I do find fault with a system which says to the family of a man, killed in the course of his employment, that they have no remedy because they cannot prove that the employer has been negligent. Casualty insurance simply shifts the paymaster, and it does so at a very great cost, but it still leaves in effect a system which is so unjust that it is surprising that the public has not long ago risen in its might to end it.

Under our law, which is the common law, and which, in this country, has not been successfully modified in its underlying principles, the workman bears the entire load; the employer is practically free from obligation, provided that he is not guilty of negligence. It is said, a man does not have to go into that employment, and if he does undertake that employment he must take the consequences. Men must live, they must earn their living, and the work must be done. The community does not say to the employer when he enters into a certain enterprise that there are certain risks attached to it, and that he should carry the risks as well as the workman. The injustice is apparent—it seems unnecessary to dwell upon it.

We have not been able to find the remedy so successfully as have the older countries of Europe. They took up the subject long ago, they have solved the problem and solved it well. Their answer to the question is one that is open to us. We know what they have done, we know what they are doing, and yet our hands are

ties and we cannot follow their example. What is the reason that this question of employers' liability and workmen's compensation has been satisfactorily solved in the old countries of Europe? The reason is that in these countries the Government has greater authority and, therefore, feels the corresponding responsibility; the Government is to a large degree paternal, and the citizen cheerfully accepts that condition and welcomes the efforts of the Government in his behalf. Foreign Governments, unhampered by constitutional limitations, have taken up the question of workmen's compensation, and have established a system of compensation for industrial accidents, in which the question of fault or negligence of employer or employe cuts no figure whatever. It is considered that the risks of the occupation are to be borne by all those who are engaged in that occupation, and that it is not right to throw a larger burden on the workman than on the employer.

The subject has been taken up in this country, and we run against constitutional provisions, federal and state, which appear to render us helpless. Either we must amend the constitutions of the states and of the United States, in order that satisfactory compensation laws may be enacted, or the question must be solved by voluntary industrial insurance. Whether the constitutional inhibitions will ever be removed I do not know, but I do know that such a result could be accomplished only after many years of effort, if at all. Many employers, having the interests of the men who are working for them at heart, have made up their minds that a proper and universal solution is far distant, and they have undertaken to furnish a solution themselves, and that has brought into existence the many voluntary compensation plans which you, no doubt, know of. They go far toward palliating the evil, but they do not go far enough, for the reason that being voluntary, and, therefore, confined to those who are sufficiently public spirited to submit to a considerable pecuniary sacrifice, they beneficially affect a comparatively small number of employes.

I want to call attention to a plan of compensation which has interested very many in the industry in which I am particularly interested, and which, on account of the peculiar conditions, I believe will serve as an object lesson to all the world, because it probably will be universal in the industry, although voluntary. A considerable number of those who are engaged in the brewing

industry have an organization called the United States Brewers' Association, which has for its object the consideration of all those affairs which go toward the improvement of the industry and those engaged in it. The association embraces a very large proportion of those engaged in that occupation. They employ about 100,000 men, and all of these men are organized in unions. All of the brewers employ, in their operations, union men, both in the process of brewing, delivering the product, in the engineering department and throughout their plants.

This condition of affairs suggested that through a broad, strong organization, on the part of the employers, and an equally broad and efficient organization on the part of the employes, provided the co-operation of these two organizations could be secured, it would be possible to work out a satisfactory plan of compensation. The attempt has been made, and the advances of the employers were promptly and readily met by the workmen, and it was thought that this matter could be disposed of in a very short time. It soon became apparent, however, that in order that this plan might be efficient and permanent, it must be established upon a sound basis, and upon complete data, such as are used by insurance companies. Accordingly, the unions were called upon to furnish figures of the extent and duration of disabilities caused by injuries sustained by their members in their employment, and this they have just done. With considerable trouble to themselves they have collected a mass of data which has been submitted to the employers, and by them to experts, who are to classify it, and furnish a report upon which a plan of compensation is to be worked out. When this is done a fund is to be created to which employer and workmen shall both contribute, and in the administration of which both employers and workmen will have a voice. The fund, of course, is contributed to a large extent by the employers and in smaller part by the employees. This is to be administered by a committee consisting of employers and workmen. All accidents will be compensated for out of this fund, irrespective of any question of fault or negligence. When the family of a workman is deprived of its means of support, here will be found a fund out of which the loss will be adjusted and compensation made.

It is expected, from the statistics so far available, that this fund, which is to be annually renewed, will also be sufficient to provide for old-age pensions. If that can be done, and the outlook is

favorable, I believe the state and federal governments will find an illustration of what can be done, and of what ought to be done, by legislation, preceded by amendments of constitutions, if necessary. What is successful as a voluntary matter will, of necessity, be all the more successful when it becomes universal because based upon compulsory legislation.

RESULTS OF VOLUNTARY RELIEF PLAN OF UNITED STATES STEEL CORPORATION

By RAYNAL C. BOLLING,
Assistant General Solicitor, United States Steel Corporation.

Before I start to speak directly upon the subject assigned to me, I should like for one moment to put myself on record as opposed to certain ideas which were presented here this morning (April 8, 1911, Annual Meeting of the Academy). Logically, I suppose I ought to put that at the end of what I have to say, but practically, the speakers' time limit might cut me off; and while I am perfectly willing that the chairman should cut off my eloquence, I do not wish him to cut off my ideas.

I am opposed to the principle that workmen should contribute to these plans of compensation, and I say this as a representative of the employer. I am also strongly opposed to any plan which I have thus far seen of state insurance, as applied to the states of this country. It may have worked very well in Germany, but I think there are many serious objections to it here. The chief objection to my mind is this—I think it will do more than any one can calculate to discourage endeavors on the part of employers for the prevention of accidents. I believe that later I can show you where and how it will work that way. If it does, it will do a great deal more harm than it can possibly do good; because the prevention of accidents is even more important than provision for the men who are injured and for the families of those killed. This is a case where not only is an ounce of prevention worth a pound of cure, but it is worth while using a pound of prevention if you can avoid need of an ounce of cure.

The problems presented by industrial accidents are not at all new to the United States Steel Corporation. For ten years very earnest and constant efforts have been made to better conditions arising from work accidents.

United States Steel Corporation experience in accident prevention and relief may be divided into three periods:

The first period covers five years following the organization

of the Corporation in April, 1901. This was a period during which the twelve or more great subsidiary companies dealt with accident problems each in its own way.

The second period began five years ago when the Law Department of the corporation commenced to act as a clearing house for all casualty matters and presently brought about the uniform methods of accident prevention and relief now in operation through the central Safety Committee.

The third period is that upon which we are now just entering —when the states are establishing by law new systems of relief for men injured and the families of men killed.

For years before the public became interested in these problems every subsidiary company of the corporation had been trying to better conditions due to work accidents. Unaided by any strong public opinion these efforts had brought to employees of these companies much better conditions than existed generally, for instance: For ten years or more employees of our companies have been able to turn directly to their employing companies for relief in case of accident. The subsidiary companies did not insure themselves against accidents, but paid their money directly to the men injured and the families of men killed. This allowed a personal relation between the injured men and their employing officers and permitted some disregard for mere questions of legal liability. Instead of only thirty per cent of the money spent being paid to the injured men, for years nearly eighty per cent of the money spent by the United States Steel Corporation for work accidents has been paid to the injured men and their families. The sums thus paid directly to the men have averaged a million dollars a year.

The fact that the United States Steel Corporation employees have felt that they were treated fairly is proved by the record that in five years only one employee out of every 200 injured was dissatisfied with what was done for him and sued the company. Even among those seriously injured only six in a hundred refused what was offered and brought suit. Of the \$1,000,000 paid to the men each year, \$52,000 was the highest amount ever paid in judgments in any year.

Each subsidiary company had its separate and well organized casualty department. The men in charge were not mere claim agents. Their orders were not simply to pay out as little money as

possible. They were instructed to pay what was needed to assist injured men and their families, even when there was no legal liability. These men also investigated each accident in order to prevent others like it and did all they could to increase the safety of the men.

Although much had been accomplished by the subsidiary companies prior to 1906, United States Steel Corporation interest in these problems brought even greater results, and in the last five years the corporation has organized for its employees what we believe to be the largest and most effective system of accident prevention and relief yet organized in the United States: A Central Safety Committee of seven members is chosen annually from among the men employed in casualty matters for the subsidiary companies. This committee acts under the supervision of the United States Steel Corporation Law Department, to which there is permanently attached one of the members of the safety committee, a former plant superintendent who distinguished himself in safety work. To this committee there is reported every serious accident among the entire 200,000 employees. At each meeting the circumstances of all serious accidents are considered, their causes are ascertained and endeavors are made to prevent any more accidents of the same sort. Whenever any safety device or other method of preventing any sort of accident is tried and found effective, complete information is sent to the safety committee. The committee investigates the matter, and if it finds the device or method is good, every subsidiary company is notified and furnished photographs, blueprints, specifications and descriptions of this new safeguard.

At every meeting of the safety committee certain plants of different subsidiary companies are selected for inspection. Inspectors are selected from companies other than those owning the plants,—companies which maintain rivalry in safety work. These inspectors are appointed as representatives of the safety committee. They report to it and not to the companies or plants concerned in the inspection. They criticise everything which they consider unsafe and commend every effort to increase the safety of employees. Then the safety committee examines these reports and sends them to the companies concerned for adoption, unless some objection is offered to any of the inspectors' recommendations. Within thirty

days the safety committee receives returns showing whether all the recommendations of its inspectors have been adopted. Nine out of every ten recommendations are adopted without question, but now and then the plant manager or local inspector wishes to offer some other suggestion. In such cases the safety committee looks into the matter with care and perhaps sends one or more of its own members to inspect the place before making its decision. Notwithstanding the fact that the plants, mills and mines were already inspected by state factory inspectors and by the casualty departments of their own companies, this system of safety committee inspection has produced in three years 7,000 recommendations for the greater safety of employees, all but 400 of which were carried out without question.

One of the most valuable ideas originated by one of the subsidiary companies and put in force in all the companies through the operations of the safety committee is the idea of having all plans for new construction, drawings and orders for machinery checked for safety. In every drafting room one man is delegated to make sure that in the preparation of plans and drawings, provision has been made for safety devices and all possible dangers of construction avoided. No new machinery will be ordered or old machinery reconstructed unless the plans and specifications bear the endorsement which shows that they have been examined from the standpoint of safety to the workmen. Without such endorsements they will not be passed by the purchasing or other operating departments. This has been a great benefit in the way of safety and has also saved much expense, because machinery which could have been equipped with safety devices readily enough when it was built can often be safeguarded afterwards only at great trouble and expense.

There is a biblical text which says: "Except the Lord build the house they labor in vain who build it," and likewise, unless the workman takes thought for his own safety, they labor in vain who seek to protect him. In the United States Steel Corporation the workmen themselves have been interested and enlisted in these endeavors to increase their safety. Over the gates at which they enter, large signs, illuminated at night, urge them to take thought for their own safety and for that of others. For example, these signs say: "To be careless, thoughtless or reckless means injury sooner or later to yourself or others;" "The more you insist upon careful-

ness on the part of others and exercise it yourself, the safer it will be for all."

Upon the pay envelopes in which the men receive their wages are printed little sermons for safety, such as: "Keep in mind at all times the necessity for care and watchfulness;" "Your efforts to prevent carelessness and correct dangerous conditions will make it safer for you and for your fellow-workmen." Every few weeks the signs and the sermons change, but always they seek to interest the men in the efforts which are made for their safety.

Everywhere inside the steel mills signs indicate all sources of danger, and some of the companies have adopted the German practice of painting red all guards for machinery and other safety devices so that the men may see all about them the evidences of concern for their safety and may assist in the endeavors of their employers.

Many of the companies have organized in each plant committees of foremen and committees of workmen. Membership in these committees changes each month, so that in time a great many of the workmen will have served on the committees. These committees make inspections at intervals which vary in the different plants from once a week to once a month, and the men are allowed from their work whatever time may be required for their services on the committees. Members and former members of the committees are given insignia to indicate that they are a part of the general safety organization. They have been taught to look for dangers; they know their suggestions will be received and acted upon, and they have become fellow-workers with their employers for the safety of everyone in the mills.

These endeavors to safeguard its workmen have cost the United States Steel Corporation over a million dollars; they require the work of nearly one hundred men, and they receive attention from the highest executive officers in the subsidiary companies and the United States Steel Corporation itself; yet the results are felt to have fully justified this great expenditure of money and attention. In five years the serious accidents to workmen of the United States Steel Corporation have been reduced to one-half their former number. This means that each year there now escape injury some 2,600 men who would have been seriously injured each year under the conditions of five years ago.

Industrial accidents present two problems: (1) prevention of all accidents which can be avoided; (2) relief of men injured and the families of men killed in the large number of accidents which are unavoidable. The United States Steel Corporation has not only applied the maxim that an ounce of prevention is worth a pound of cure but it prefers to use a pound of prevention rather than have need of an ounce of cure. Nevertheless, every commission which has studied this question has declared that in modern industry a large number of accidents are unavoidable. For the men who are injured and the families of men who are killed the United States Steel Corporation has provided a plan of voluntary accident relief. That is our name for workmen's compensation; we think compensation is a misnomer, a vestige of the old theory of legal liability, for there is no way to compensate a workman for the loss of an arm or leg. Our accident relief was put in operation a year ago, in advance of any legal requirement. Under this plan there is no question of legal liability. The injured workman is given relief, even though his own fault led to his injury. The amount of relief is specified more definitely than in the German and English laws. Copies of the plan, printed in thirteen languages, are distributed to the workmen, who can see for themselves just what will be done for them if they are injured, and for their families if they are killed. The plan is flexible, providing more for married men than for single men and increasing the amounts with the size of the family. Men earning high wages receive more than men earning low wages, and the longer a man has been employed the larger his relief in case of accident. All this is given without any contribution from the men themselves. The payments are made even when those who receive them are ignorant that they are entitled to anything and have made no demand. After a year's trial this plan is considered thoroughly successful. It has gratified the men and has diminished litigation. We believe it has done a great deal to establish better relations between the United States Steel Corporation and its employees.

We are now entering upon a new era in the relations of employers to their injured employees. The old idea of liability only when the employer was at fault is being changed to a system of relief, regardless of fault. The United States Steel Corporation has already put into operation this new system. It has done this voluntarily and without the aid of any statutes. Obviously the

United States Steel Corporation is in favor of fair and reasonable statutes of this kind. But when we make this great change in the legal principles under which we have lived so long, it behooves us all, employers, employees and legislators, to be fair and reasonable. Some of the theories put forward in proposed legislation seem to me obviously unfair and unsound in principle, for instance:

It is unfair that the employer shall be compelled to give compensation regardless of fault if the employee is not bound to take it, because the workman cannot rightly ask to be compensated for injuries due to his own fault, yet for the fault of his employer seek to recover a much larger amount from a jury verdict. If fault is to be disregarded it must be disregarded equally whether it be the fault of employer or employee.

It is unreasonable to pass statutes under which either the employer or the employee is allowed to choose after the accident whether the compensation act or the common law shall govern, because the employer will assume that he must prepare to defend himself in court and he will regard his injured employee with distrust and antagonism, while the employee will be tempted by his selfish interests to threaten and dicker, to gamble on the chance of a large jury verdict and to take bad advice as to that chance. All the useless waste, delay and unfortunate antagonism which exist to-day will be continued.

I do not believe either on principle or in practice that statutes should require contribution from the workmen, because:

On principle, the workman's loss in wages is his contribution. If he is disabled for two months he receives fifty per cent of his wages and loses the other fifty per cent. That loss is his contribution, why should he be required to pay part of the employer's share?

In practice any contribution by the workmen requires state administration of the funds, and this seems to me most objectionable of all the plans put forward. You ask why I consider state insurance the worst plan which has been proposed? My reasons are:

1. It is bound to discourage endeavors to prevent accidents, because all employers in the same kind of business are placed in one class and pay the same premium, regardless of the amount of money and effort spent in making their plants safe. The best

guarded rolling mill and the least guarded pay the same premium. Why should one employer spend thousands of dollars in prevention of accidents when others in the same kind of business spend nothing for prevention and pay the same premium for state insurance. After his premiums are paid to the state the employer has no further financial interest in the matter. Unless he be a very humane employer, why should he spend large sums for safeguarding his employees?

2. The financial burden of state insurance will soon become intolerable, because the employer has no voice as to the amounts which will be paid out from the fund or as to the premiums he will be compelled to pay into it. The employee's contribution is so small that his interest lies in the largest disbursements. The state officials have no personal interest in the prevention of excessive and unwarranted payments. On the contrary their best chance of popular favor and political influence lies in the largest disbursements.

3. This state insurance plan will put the greatest possible strain upon the state administrative machinery, because it will require the disbursement by state officials of enormous sums of money almost without check. The dangers of a partisan or corrupt administration of this great insurance fund are absolutely appalling. Even an administration free from politics or corruption is likely to be inefficient and may even bankrupt the fund.

After this statement of objectionable features which are found in some of the statutes proposed, perhaps I ought to mention what seem to me the most desirable provisions for fair and reasonable compensation acts:

First.—These acts should be made just as far compulsory in principle or in practice as the federal and state constitutions will allow. I think this has been accomplished under the act which has just become law in New Jersey and would be accomplished under the Pennsylvania and Wisconsin acts.

Second.—I believe these acts should include all classes of employees, even to farm laborers and domestic servants. Insurance will do away with possible hardships from this extension of the acts.

Third.—A period of ten days or two weeks before any payments are made appears to be absolutely necessary in practice. I

do not think the payments made after that period should go back to the time of injury.

Fourth.—I believe strongly in some schedule of compensation for various injuries entailing permanent, partial or total disability. These are the cases for which it is difficult to make any rules. Many minor objections may be offered to this plan of a schedule, but the only other plan is arbitration or a decision by some court; and that causes delay, involves the employment of doctors and lawyers, and results in much of the antagonism that arises to-day. If a schedule is provided, so that for various injuries the employee knows just how much he is entitled to receive and the employer knows just how much he is required to pay, I firmly believe that the great majority of cases will be settled amicably between the injured man and his employer, even when the injuries are not among those listed in the schedule.

Fifth.—The amounts to be paid under any fair and reasonable compensation act should be such that the burden thrown upon the employer is not too greatly increased. Any very great increase in this burden is bound to jeopardize the success of this new theory of providing for injured men and their families.

As my last word to you let me suggest one aspect of this matter which is not often mentioned. It deserves mention because there are some who assert that workmen get nothing from employers except by contest and struggle. To this mistaken belief they lead the workmen, and on that belief their leadership is founded. To such assertions the progress of workmen's compensation should be a rebuke and a rebuttal. I do not believe so great a change in the relation of workman and employer ever before came about in so short a time. I know such a great change was never before brought about with such willingness on the part of those whose burdens are increased by it. Employers have not only accepted the idea of workmen's compensation; they have assisted its advance, have served upon the commissions and committees which have recommended it, have put it into operation voluntarily, and have obtained its enactment into law; knowing that it will cost them more, they have nevertheless urged its adoption. I believe this ought to be a lesson in optimism as to the relations of workmen and employers. I think it ought to strengthen those leaders among workmen and leaders among employers, who believe that capital

can be fair to labor and labor can be fair to capital—if we will hold to that faith and neither falter nor listen to evil counsel. It should help that faith, to feel that in this movement for workmen's compensation our eyes have seen the coming of a great concern by employers for the welfare of their workmen.

DISABILITY AND DEATH COMPENSATION FOR RAIL- ROAD EMPLOYEES

BY DANIEL L. CEASE,

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Compensation is comparatively a new question with us. Six years ago it did not receive a second thought from the Brotherhood of Railroad Trainmen, the largest railroad organization in this country, when the statement was made to it that industry must be made to pay for its human wreckage. It was accepted as so much agreeable expression calculated to please the audience. Yet in six years this subject has been so thoroughly discussed, its merits so well explained and the justice of the demand become so apparent as to be thus expressed: "Compensation to the injured workman is a legitimate charge against the cost of manufacture, and the victim of an industrial accident, or his dependents, should receive compensation, not as an act of grace on the part of the employer, but as a right."

War is regarded as the most dangerous pastime at which men can play, but when the hazards of industry are compared with it the soldier appears to be a preferred insurance risk aside from a general engagement, and the army the only really safe place for a man to be.

This is a common comparison, but so well has it served its purpose that public opinion is concentrated in a demand that the terrible loss of life and limb be compensated for and ended as far as possible by the intelligent and reasonable use of safety appliances. The time limit now set upon the operations of the employees stands in the way of securing any advantage from protecting devices provided for them. The devices fail in their purpose when the high speed required of the worker prevents their effective application.

The enforced payment for injury and death will lead the employer a long way out of the beaten path of unconcern for his employee and force the adoption of better safety appliances, with time to use them without loss of wages or position. The rule of

industry is performance and product first, safety if there is time for it. Until the responsibility of the employer is fixed and the certainty of compensation is established there will not be less of death and disability incident to industrial operation.

What may be regarded as a serious set-back to the law of enforced compensation is the recent decision of the New York court against the law of that state. The constitutional guaranty to protect property rights under all conditions is construed to mean that, until the constitution is changed the order of things must be liability and fight rather than compensation and settlement. It holds that no man can be deprived of his property without due process of law, but it means that the same property holder can continue to maim and kill his employees without regard to due process of law. But it is a dangerous game for the employers to play at. Legislation and court decision must conform to public desire and the longer the death and disability record stands unpaid, the more exacting liability and compensation laws will become. They will finally force the employer to seek settlement for they will be based on the fact instead of the fault of accident. Legislation may be delayed but there is nothing under heaven that can stop it.

Lack of accurate statistics forces us to accept the estimates, that vary from five hundred thousand to two millions of killed and wounded a year as the toll levied in the name of industry. It is very clear that the enormous loss in human life, limb and energy has never been humanely regarded for the reason that there are always men ready to step into the vacant places, and further because the injured and the families of the killed have, in a sort of way, accepted their mental and physical wounds as a part of the day's work and made the best of them without any great outcry against the unfairness of business that compensates for everything except human life and human misery.

I am going to tell you of a class of employees that are, in a way, pretty well known to all of you, that is, you know them as you see them, usually on passenger trains and occasionally in the yards and on freight trains. I know that you will agree with me in saying that they are an unusually intelligent class of men but even at that you do not do them justice. You may not know that these men are the pick of America's workmen, that each

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one of them has had to pass a physical and mental examination more exacting in some respects than is required for admission to the army or the navy; they must be young, physically perfect and show a fitness for the work or they are not retained in the service. Only young men are employed, the physically and mentally alert, ready to act on the emergency with sound judgment, for railroad work does not admit mistakes. They usually mean disaster and death and the penalty must be paid.

Nine of these railroad men daily go down to death following their occupation and one is killed or injured every seven minutes year after year. The last report of the Interstate Commerce Commission shows that 3,383 employees were killed and 68,618 were injured for the year in which it was made. The record of injury does not give much information as to the final results of the casualties. The extent of partial or total disability is not known, but we can take the insurance payments of the five railroad organizations as a fair index of the number of total disabilities that resulted. They pay certain amounts for total and permanent disability, that is, for such disablements only as prevent the injured from performing the work at which he was engaged at the time of his injury. Minor injuries are not included in their records.

The records of the Brotherhood of Railroad Trainmen show 16.4 claims paid per thousand insured; the Order of Railway Conductors pays 12 claims per thousand insured; the Brotherhood of Locomotive Engineers pays 8 claims per thousand insured; the Brotherhood of Locomotive Firemen pays 7 claims per thousand insured, and the Switchmen's Union pays 15.5 claims per thousand insured. And two-thirds of these claims are for accident. The working life of a brakeman is estimated at only seven years and the average of our conductors, brakemen and switchmen killed and totally disabled is 32. There is a long period judged from life expectancy unprovided for.

What do the railways pay? No one knows; but it is reasonable to say that not more than 10 per cent of injuries and deaths are compensated and the average amount paid is low.

The question may be asked, why is it with the adoption of safety devices on railways the casualty rate remains about stationary, for that is the fact, as reference to government reports

will show. 1909 did show a falling off in casualties but the report is for half of 1908 when business was poor, fewer men at work and the hazards thereof comparatively diminished.

Safety appliances reduce the number of casualties of some kinds, but where they save life and limb in one way they take it in another. Without safety devices it was impossible to handle equipment as it is now handled; cars were by no means as large, distances between tracks were greater, trains were shorter and lighter, the train and yard men were on their guard against sudden stops and starts, and in many other ways the hurry-up practices of to-day were not possible with the link and pin coupler and hand brake.

Train capacity in twenty years has been increased five-fold to say the least, cars and engines are equipped with automatic couplers and air brakes, built to take care of themselves and by their own strength do so, but unfortunately automatic equipment is not always automatic, it needs adjustment; distances between yard tracks particularly are so short that it often happens a man cannot stand between them when they are occupied; it is an easy matter to get caught between tracks, knocked from ladders or fall between cars in going over the top of the train. Trains are longer, frequently a mile of cars, and communication in many instances is out of the question between men on the same train, which adds to the dangers of the work; the sudden application of the air from any cause is likely to unbalance the man on the car and throw him off, usually with serious injury.

You have been informed of the rules in vogue on every railroad that are intended for the protection of the employees and you doubtless feel, after reviewing the casualty records, that railway men are a careless lot, with little regard for their lives or limbs, that they will not obey the rules established for their safety, in short, that they court injury and death, the only apparent reason being that of disturbing their employers and mussing up the right of way with their remains. The railway employee is careless, just as you are in crossing a busy street in the face of motor and street cars, but be generous enough to credit the railway employee with the same reluctance to undergo bodily pain as yourself; the fact that he works for a railroad company does not make him insensible to physical or mental anguish. You very naturally

ask, if this is true, why, then, does he not observe the safety rules adopted for his protection? The answer is a short one; he does not have the time.

I would like to take a few of you, who believe the rules of the railways purporting to protect their employees from injury and death are meant to be obeyed, one trip on local freight on any eastern railway, or set you down with a switch crew in any large yard, and if these experiences did not satisfy you that the rules were made for the purpose of protecting the railway companies against personal injury suits, I would like to have you investigate a hump, or gravity, yard, where you could readily note the opportunity given the man carefully to examine all cars, equipment, appliances, tracks and other things too numerous to mention, that he is admonished by the rules carefully to look into before he works on a car, and note how much time he has to do all of this. The man catches his "cut" on the run and if he fails to catch it, his job is gone.

On the road there is no time to examine cars, appliances or anything else. The first thing to examine is the schedule to see how much time there is to do the work and keep out of the way. When freight trains have cars to set out at stations and the car has to be placed on the opposite side of the roadway it requires that the train be flagged in both directions; this takes the two brakemen. The conductor handles the train in making the switch, cuts and rides the car into clear or places it with the engine as the case may be, looks after the train as it recrosses to its own tracks, sets up the switches both ways, backs down and couples up his air and gets ready to go. Now can you imagine a conductor or a brakeman taking the time to inspect the train, the appliances, roadway and switches before he sets out that car, and making time over the road? A moment's thought will convince you that it not only cannot be done, but it is not expected it will be done. It merely shows the purpose back of the rule, that is, to protect the company against injury to the man.

The man following the switch engine is another who is condemned for his recklessness, and he is reckless—why if you go down to the yards you will see that reckless car hand run after a cut of cars, swing on at the peril of his life, climb on top and set brakes without the least regard for his safety. You might also

note that he did not examine the safety appliances, the right of way and the other things he is supposed to look into carefully before he takes hold. Do you suppose he is doing all these dangerous acts for his own pleasure or for the simple sake of giving his employer heart failure? You know that he placed his life in peril. He will tell you that if he had not taken these risks his job would have been in peril, and he needs that job.

Right here to illustrate what I mean I quote from the *Evening Bulletin*, of Philadelphia, Pa., for March 17:

"Coroner Ford said at the close of an inquest to-day that he would hold any railroad conductor on the charge of criminal negligence when a man was killed by shifting cars if the conductor had not a flagman protecting the train.

"It is the rule of all railroads that flagmen must run in front of the cars, shouting a warning, when they are shunted upon a track. Because of the disobedience of the rule, it is said, Harry J. Baker, a brakeman of the Pennsylvania Railroad, recently was killed at Forty-fourth and Thompson Streets.

"He was repairing a coupling on a car when several cars were shifted and crushed him. Edwin M. Freer, the conductor, said that the cars were not protected by a flagman because they were being shifted on a storage track.

"Coroner Ford said that Freer's action bordered on criminal negligence. A verdict of death by accidental injuries was given."

This switchman was adjusting an imperfect device. He was between cars and did not have the track flagged on which he was at work. Why did he not take the safety precautions demanded by the rules of his company? Why did the crew that placed cars against the ones on which he was at work not look over the track to see if there were anyone between cars? For two very good reasons, there are not enough men employed to do it, it never has been done, was never expected to be done, and never will be done, until the employer is forced to pay for disability and death.

Several years ago one of the train and engine crews employed on the Reading headed into a side track to meet a number of trains and fell asleep from exhaustion. They failed to notice the number of trains that passed, pulled out between sections of the train they were to meet and pass, with the result that a number of persons were killed, when they collided with the train for which they had

not waited. The engineer was sentenced to a term of years for manslaughter and the court said in substance that if men were tired out and unfit to continue their work, they should quit, rather than take the chance of doing injury, but the jurist did not mention the important fact that there is a law in Pennsylvania that forbids the leaving of a train between terminals, and overlooked the injustice of advising the men to quit if they were exhausted. The men had to live, and they had to work to live, a simple matter the jurist failed to remember.

You have another case, that of a Pennsylvania railway employee who obeyed the orders of his conductor, attempted to couple two cars that were not equipped according to law and who was killed as the court said, "because of his neglect." The jurists for your state declared that Adam Schlemmer, the brakeman in this case, ought to have kept his head out of the way, but unfortunately he could not. The coupling had to be made between a caboose and a steam shovel car, not equipped with the automatic coupler. Schlemmer had to get down under the cars, hold his lantern, and guide the heavy draw bar into the opening of the coupler on the caboose. Schlemmer looked up to see if he were placing the draw bar properly; if he had not, he would have been killed, and in raising his head to look, raised it a trifle too high and lost it. Even a jurist who has a record for fairness said, that as Schlemmer was twice warned not to raise his head, and to be careful, so, therefore, he was negligent when he did so. I would like to take that stern dispenser of impartial justice down into one of these railroad yards to-night, hand him a lantern and put him under two freight cars to couple under similar conditions and if he lived to tell the story, I venture to say, that there would be one justice who would regard the law of negligence in a new light.

The man was told to be careful, the law said that cars must be equipped with devices that would couple by impact and the Pennsylvania railway company referred to its warnings of the use of appliances and declared Schlemmer was negligent because he had to look to see what he was doing or be killed.

A fair court would have said in a few words, the man was trapped to his death because of the negligence of the railroad company and it will pay for it. The case of Adam Schlemmer still drags its weary way through the courts.

The law protecting the employer in his property rights is supreme except under unusual conditions; human right is still a matter for protection.

The efficiency of the safety device is greatly exaggerated. It is difficult for one not familiar with the service to realize that the safety device has not served wholly the purpose for which it was intended because other conditions that have come along with it have minimized its efficiency.

To illustrate I refer to the number of brakemen and switchmen who have their feet and legs crushed coupling cars. How can a man couple cars with his feet, is a natural inquiry. He does not, but he finds a coupler out of adjustment, it is impossible to move it with his hands, he braces himself, puts his foot against it to shove it in place and fails to get his foot out before the cars come together. This plainly is contrary to rule, common sense and everything else that can be charged against the employee, then, why does he take such chances? The freight brakeman runs over the top of a fast moving train, the law says he does not have to do it; he hangs far out of the caboose window to look for hot boxes or mounts a car being switched to a side track and is in danger of striking an obstruction; he runs alongside of a moving car trying to adjust a coupler, his employer has rules forbidding carelessness; you may see him pole a car, contrary to rule, which tells him to use a drag rope, but if this rule is to be obeyed, why is the push pole placed on the engine? Every dangerous performance is contrary to safety rules made and provided for his benefit. Why is he so reckless? He has to be, if he wants to hold his job. He is not a car inspector, nor a track walker, and if he should attempt to follow the rules laid down for his safety he would lose his job because he would be too slow for the business. All of the elaborate safety rules read well but it is not expected the employee will observe them. They are signed by him when he goes to work and are used as the legal defense of his employer if he gets killed or injured. It is difficult for accident to befall him under the rules without his being guilty of their violation in some way or another. The rules go to the public which condemns the carelessness of the man, but the unwritten order goes to the employee to keep traffic moving at all hazards and it is the latter order that he obeys. If all the rules for safe train operation were enforced there would not

be any "limiteds"; congested traffic would settle them beyond the shadow of a doubt.

But it is the killed and injured with which we have to deal in the hope of inspiring public demand for relief. As the casualty rate stands, each seventeen years means the death or disability of the entire number of men now on the rolls. It means that, inside of approximately twenty years, more than a million and a half men will be killed or injured in railway service.

The number bulks so large it is not easy to realize what it means; it is difficult to understand that close to seventy thousand persons now contribute their lives and limbs to this one industry annually, and the number is growing. These accidents and deaths pass unnoticed, because they happen one at a time and are scattered over a great expanse of territory; but suppose any one of our cities of like population were to suffer an equal number of casualties in one year, do you suppose we could realize what it would mean?

But here are these men, the flower of American manhood, contributing the best service and giving their lives to its defense without assurance of compensation in the event of injury or death. They give their best, accept the hazards and know they must fight for every dollar they receive in the event of death or disability.

They realize that the company will fight them unfairly from the time they are injured until they are driven out of sight and hearing by personal release or court decision. The companies do not fight fairly, they do not give the man an even chance for his defense, but are after his release before he recovers from the anaesthetic in the hospital; they hound him in his delirium; they haunt him with demands for adjustment under pretense of benefiting him or his family. The ambulance chaser is damned in good legal society but he is an angel of goodness and purity compared to the railway claim agent. The injured employee is at every disadvantage. He knows that he cannot depend upon his associates to testify in his behalf if he brings suit, for it means the job of the man who bears witness against his employer. In the case of *West vs. C. B. & Q. Voluntary Relief*, Judge Baker, of Chicago, recognized this truth. He said:

"Six witnesses, mainly farmers, residing near this highway crossing, testified that the tell-tales were not put up until after

West was struck. The bridge crew and section men, fourteen in all, testified that the tell-tales were restored the second day before the injury. Furthermore, the records of the work done by the bridge crew and telegraph messages sent over the company's wires from the bridge boss to his superintendent telling the daily whereabouts of the crew, were introduced. These corroborated the men's testimony. Thereon counsel for the company insist that the evidence of the plaintiff was so slight in comparison with that of the company that the court was justified in directing the verdict. The records and messages were at all times in the custody of the company's men, who would naturally have an interest in freeing themselves and the company from blame. And while there was no direct attempt to impeach the company's men and records, the ultimate fact was squarely contradicted by the positive and circumstantial testimony of apparently disinterested men, whose reputation for truthfulness was unassailed."

I know of one instance where an injured switchman carried a broken hand-hold to the hospital with him and did not let go of it until they took it away from him. These are a few of the difficulties the men know they must face if they attempt to recover for injury or death. A private settlement usually means little. I was recently informed that one of the roads entering this city averaged less than \$700 for its private settlements and less than \$1,200 for settlements, all costs included, made in the courts. Another road pays \$1,000, the amount contracted for by its relief department, which the employee usually takes in desperation, because he knows what litigation means for him.

With the railway death and disability lists accurately fixed we still are in doubt as to the number of cases that have a chance for recovery through the courts. The common law is against the employee unless he can establish the fault of the employer; the statutes have been modified in certain respects in some of the states but the opportunity for recovery is slight compared with the number of casualties. Germany offers the only statistics of responsibility for death and disability arising out of employment. The figures for 1897 show 17.30 per cent the fault of the employer; 29.74 per cent as the fault of the employee; of both 4.83 per cent; 5.31 per cent were due to fellow servant or other person; 41.55 unavoidable accidents for which no one was responsible; 1.27 per cent

attributed to the act of God. A review of these figures will assure one just what a slight chance the workmen in the United States have for recovery under present laws, which leave the burden of accident and death just where it falls, resting upon the fault rather than upon the fact of accident.

The proposition before us is to set aside this inhuman doctrine and substitute a new doctrine of the killed and wounded, which will get away from the law of liability and take up the law of compensation for the purpose of assuring definite payments for all accidents arising out of employment which are not caused by the wilful fault of the employee.

To-day it is cheaper to kill men than to protect them; it is less costly to fight them in the courts than to deal fairly with them and their families; the disposition has not been to adopt the more humane doctrine of placing the burden where it belongs, that is, upon the industry responsible for it and the outcome is a demand for compensation that will shift the burden.

Court delay frequently takes the advantage from a favorable decision, for trials, appeals, re-trials and delays on every disputed ground place the disabled workman at a serious disadvantage.

There is some danger that in the hurry to make up for lost time and in copying certain established systems abroad American legislators will overlook some of the most important features of the plans that have been tried out abroad. This tendency shows itself in several proposed laws in the form of compensation for a given period only, which if adopted will merely postpone the period between injury, compensation, its use and finally a falling back upon charity as we now have it. If all the proposed compensation laws were immediately enacted and in operation, after a period of six years the surviving pensioners would be exactly where they are to-day, that is, injured beyond the ability to earn a living, their monthly and annual payments ended and they left without further means of support.

We might very safely start our compensation plans by giving the totally and permanently disabled employee a fair proportion of his earnings for the remainder of his life, instead of cutting him off with a maximum payment of \$3,000, at best divided over a period of six years as the majority of the plans now contemplate.

In the desire to get away from the courts and the lawyers there is danger that we may also get rather far away from the main purpose in view, which ought to be the assumption by the employer of the burden of living for those who have become wrecked contributing their share toward industry.

Compensation legislation ought to include free hospital service. In certain of our large cities ambulance owners, hospitals and undertakers to-day fight each other for business while the man dies. The day for these inhuman practices, we hope, is drawing to a close; that soon it will be recognized that the workman is not only worthy of his hire, but that he will no longer be asked to assume the burden of disability and death incurred in the service of his employer.

We believe we are both right and consistent when we say in summing up the question that every human sacrifice must be fully compensated, without having to wait for the delays and uncertainties of the courts; we want the injured not to have to suffer mental pain with his physical ills for fear of the future of himself and family; we demand medical, surgical and hospital attention; we want certainty of responsibility fixed for the employer, with certainty of compensation fixed for the employee; we want the injured employee and his family to remain just as useful members of society as they were before the industrial sacrifice was made! We want the defenses of negligence and assumption of risk eliminated, and the professional risks made to rest upon the profession, not upon the injured employee, so that liability will not offer its present invitation to fight, and so that compensation will be acceptable to both parties. This is, I believe, the only way we can enforce compensation.

DISCUSSION

MR. MACVEAGH: With reference to the cost of a United States pension retiring system, I might speak of the Gillette bill. This was the best proposition that has been brought forward. The nominal cost to the Government would have run from \$1,000,000 up to \$3,000,000 the first year, and then have decreased for the next thirty years. The basis of the bill was a contributory system for the future, but the Government was to pay at the start for all existing employes; that is, the Government was to supply the contributions of existing employes from the time the man or woman entered the service.

I said to Congress that, if it would allow us to put that bill into operation, the department would not ask a cent more than the regular appropriations. In other words, if Congress would make the appropriations exactly what it ought to make them for the existing service, we would put the pension system in operation, and the executive department should pay for this out of the appropriation, and it would not cost a penny extra. This could be done because of the saving in efficiency, and it was proved by the actuaries and practical men of the department that it could be done. The proposition of Mr. Baldwin is quite correct, that pensions are not an expense to the municipality if it adopts the right system.

MR. GEORGE T. MORGAN: In advocating civil pensions, we, as civil servants, have been charged with having only a selfish interest. I wish once for all, and with all the energy of which I am possessed, to enter a decided protest to this charge. Our plea is a plea for justice, not self-interest, simply justice and that not only to ourselves, but to all.

The government employe should save some money. The veteran admits this—no one more ready. We all agree he should have saved some money, but the fact is he did not. Perhaps he had sons to send to college, daughters to clothe and educate, maybe old folks to take care of. At any rate, he did not save. It is not a theory that confronts us, it is a condition. If you throw him out now, he goes out to be a burden to others.

Do justice to the young man entering the service, so that he can devote his undivided attention to his work, so that he can spend his days and nights perfecting his knowledge for the special work he is called upon to do—work that does not fit him to do anything outside, but rather unfits him for other employment. Justice! So that the young man will not be thinking all the time how soon can I get out of this, but how long can I remain in the government service. Justice to the young man, so that as a nation we shall no longer have to face the fact that 50 per cent. of the whole force of government servants have been in the service five years and less, and that there were 11,000 voluntary resignations last year. The National Civil Service Reform League, with headquarters in New York, and Professor Eliot as their president, in their last report says, "Some inducement must be offered to able and ambitious young men to enter the service."

Do justice to those who are in the service, those who have been there for fifteen, twenty and twenty-five years. Those who are bearing the burden and heat of the day. They are not time-servers, not men who watch the clock, but men who give their whole mind and thought to the work, for the honor of the service, striving that each day's work shall be better than the last. Justice to these men, so that they will not be half-paralyzed by the unbidden bitter thought, "What will become of me when I can no longer keep up with this ever-increasing strain?"

Do justice to the administrative officers of the Government, who are ever seeking to increase the efficiency of the force that they have under their control. Men who are filled with the laudable ambition to leave the service better than they found it, but who are balked and hampered at every move by the fact that they have no retirement system. Officers know that there are men in their service who cannot and do not do the work allotted to them. Heads of departments cannot retire them on pension, as there is no pension law for civil servants.

No wonder Congressmen are affrighted when one says pension.

Congressmen know that the civil service could be made more efficient and should be improved, and they know that this cannot be done until a civil pension law is passed and the veterans retired. Perhaps it would be better if we called it a retirement law and thus avoid the word pension. Anyway, in simple justice to our

legislators, let us have a law passed so that they can be relieved from this trouble and devote their best thoughts, their undivided attention to the other and greater subjects that are before the nation.

Do justice to the taxpayers. We have probably six thousand superannuated men—veterans in the service—who are not giving full value for the money that is being paid them. Retire these veterans; not on full pay, as they are now, but on half-pay, and one-half of the positions of the retired men need not be filled.

We are all under bond—250,000 employes, probably, under bond. Congressman Palmer said in the House last month that these bonds in security companies amounted to \$360,000,000. At the usual rate of \$1.40 per thousand, you can readily see that this tax amounts to \$500,000 a year. From the British postmaster-general's report I learn that, fifteen years ago, a Royal Commission decided that bonding government servants was a useless tax upon the men. The pension system was all the bond required. Half a million dollars a year paid to surety companies is a useless tax.

Finally, let me plead for justice to the old men—men who have spent thirty, forty and fifty years in the service, men who are seventy, seventy-five and eighty years of age and over, men who totter to their places every day, potter around all day pretending to do something and then totter home again. Three thousand of them. It is a pitiable sight, a picture not on exhibition in any other nation under heaven.

MR. ALLAN B. WALSH: I am serving as a member of the New Jersey Legislature during the administration of Governor Woodrow Wilson, who feels that it is a sacred, solemn duty to carry out his promises to the people. During his campaign, among other things, he promised the people an effective employers' liability law and last week the legislature, under his leadership, enacted such an effective law.

In the New Jersey law, when the compensation schedule is elected, the fellow-servant and the assumption of risk clauses are abolished and the injured workman receives half-pay, excepting that the maximum is \$10 per week and the minimum \$5, provided that he was not wilfully negligent at the time.

It can hardly be expected that this grave question can ever be satisfactorily arranged among all concerned, but there can be

no doubt that we can move along by just and conscientious legislation toward a state of affairs that will leave small room for complaint. It must be admitted that the question of employers' liability is one of the most important, and, indeed, too, one of the most pitiful subjects before our statesmen to-day. Year after year those who seek the welfare of the multitudes of our toiling citizens have been promised relief along these lines, and year after year their hopes have been cruelly shattered by disappointment. I cannot understand how any man, with a heart of flesh capable of human sympathy, can fail to be convinced that the workingman has been treated in a manner which I can only designate as unfair. But I honestly believe that the day is near at hand when even those who in the past have dealt legislation to the working classes from a "cold deck" will insist upon shuffling the stacked pack and giving the toiling masses a genuine "square deal."

Men will talk to you enthusiastically about the conservation of natural resources—and, surely, the conservation of our natural resources in the interest of the country at large is a very important matter—but, at the same time, some of these very men will stand idly by and let the vast army of our fine American workingmen go down to their untimely graves or be flung like refuse into the rapidly increasing ranks of the poverty stricken and miserable. Our forests are important, of course they are; our streams, rivers and lakes are important; the conservation of all the natural resources of our American soil is important, but I put it to you, gentlemen, is not the most important resource of our American nation the mighty army of our workingmen? Is it not through their toil that all the work of conservation is to be finally carried out; aye, even the conservation of the country itself among the nations of the world? Therefore, are we not bound, even as patriotic citizens, to have at heart the interest of these toilers and to use our influence at every opportunity to have laws enacted that will properly safeguard them as they toil, and thus put an end to this yearly carnage which is a disgrace to the country and to us?

It must be remembered that we are dealing with a class who, as a rule, have no resources to fall back upon. Their daily wage hardly admits of it. Multitudes of them have struggled to make a home and enjoy its comforts, such as they may be, when the day's work is done. That home depends upon their earnings.

Few of us would be willing to change places with any of them, but, nevertheless, it is what they have toiled for, it is their home and their only ideal of happiness in a world which holds for them, as you know, very few joys. What a fearful tragedy, then, to take only one instance, where the sole support of such a home is suddenly removed. You may talk about the alarming increase of Socialism; you may talk about anarchy, about the increase of crime, about the degraded moral conditions of our great cities, but, I tell you, gentlemen, you have your fingers upon the pulse of the difficulty. By the absence of proper employers' liability legislation we tolerate a condition of affairs that must breed crime. What is the reason for this terrible condition of affairs in the industrial world? What is the reason for these heartrending catastrophes which cause so much sorrow and misery among us? The reason, gentlemen, after all is said, simmers down to this: That it is cheaper to kill, cheaper to injure and pay some little compensation under our existing laws than it is to provide safeguards.

I submit that if, by the enactment of proper employers' liability laws, the employers are brought to realize that it is cheaper to provide adequate safeguards than to pay damages, then, as a matter of economical expediency, as a matter of good business policy, they would hasten to provide safeguards, and the deplorable accidents we have to record so frequently would be cut down to a minimum within a few years.

The consumers of the product of the workmen's labor should contribute to their support in proportion to their consumption. This could be done by the employers adding to the cost of his product in the same manner in which he adds the cost of his fire insurance premiums whereby he seeks to protect himself from loss by fire. You know how our great railroads fought against laws compelling them to use air brakes, and you know how now they would battle as a unit against any law which would even limit their use, because as a safeguard they have proved an effective remedy against accidents and consequent endless litigation and payment of damages. In like manner the expense put upon employers of labor to safeguard their workers would be an initial expense for which they would soon find themselves amply compensated, and I have no doubt our famed American ingenuity would soon succeed in furnishing thoroughly adequate protection in all lines of work at a minimum cost.

I find that in foreign countries many employers offer premiums to those who by their inventive genius are able to improve existing methods of protection. There are humane employers who, to the best of their ability, provide safeguards for their workers, and these employers should be protected from the unfair competition of those others, who, in their greed for gain, allow themselves to be influenced by no such humane considerations.

I sincerely hope and trust that the agitation started by the American Academy of Political and Social Science will remind the legislators and members of Congress of Abraham Lincoln's words, "That government of the people, for the people, and by the people, shall not perish from the earth."

MR. G. A. RANNEY: The International Harvester Company grants pensions for long and faithful service. At the time the regulations of our pension system were being formed, the question of contributions was carefully discussed, and it was found that the younger employes were not interested in contributing for a pension. The company did not believe that a contributory plan for a corporation was practical, and agreed at the outset that no contributions made by employes for a pension fund would be considered.

Question—Under that contributory system, would not they draw the accumulations if they left the service?

Answer—The contributions would have to be returned, or, at least, a large percentage of them returned, to the employes. Such a plan might appeal to certain employes, but the rank and file would not be in sympathy with it. Many of the ordinary workers would not appreciate and understand it, and, in our opinion, there is danger of such a plan creating a feeling that the employe would be paying for something that he had a small chance of realizing.

MR. HARRY D. THOMAS, of the Ohio State Federation of Labor: I understood the discussion was on pensions for municipal employes. The difficulty, it seems to me, is due to the fact that outside of fire, police and teachers, all departments of municipal government are not under civil service rules. The first essential thing to undertake in municipal government, if you are going to establish pensions for employes, is to establish civil service rules. Ohio has recently started that plan, and since January 1st, of this year, all

employees in every department, with the exception of common labor, have to undergo civil service examinations, and are subject to civil service regulations. A pension system can probably now be started in Ohio. In other states you must have a permanent civil service before you can have a pension plan.

MR. MILES M. DAWSON: I wish to join with the gentleman of the International Harvester Company in urging that the best form of pensions for employees is service pensions, without contribution by the employees. The views of actuaries who have given the greatest attention to this subject are practically in conformity with the opinion which the managers of the steel company reached in their deliberations. The highest authority among the actuaries in Great Britain, Henry W. Manly, in his valuable book on this subject, has given nearly two pages to pointing out all the difficulties, entanglements and troubles which attend all the systems. His conclusion is virtually this: It is a good thing to have a voluntary contributory pension scheme; it is better to have a compulsory, and it is yet better to have a plan under which both employees and employers contribute; but better still and best of all when the pension is a straight-out service pension, without requiring contribution. Experience in this country fully bears this out, and such observations as I have made lead me to concur with Mr. Manly's opinion.

The other thing which tempts me to rise at this time has to do with what a gentleman said with regard to the wastefulness of the present system; that is, of employers' liability insurance. One of the points of wastefulness, chargeable not to the insurance companies, except in part, and that not the largest part, is that when the employer insures, on the average not more than from 20 to 30 per cent. of the premiums actually reach the widows and orphans. This is after deducting not only the expenses of the company, but also the amount which the ambulance chasers and the attorneys for the workmen and their families take from the proceeds. Certainly it is a frightful indictment that out of what costs the employer about \$3 or more, only \$1 gets to the persons to whom compensation should be paid.

There is probably fully as great a waste where the employers do not insure. By the time the attention of the people connected with the business which is diverted to the investigation of claims is

considered, reasonable allowance made for interference with the business, and the cost of carrying defectives and crippled in positions which they cannot fill, and the various other items of cost, including the large fees to attorneys to defend against actions, when all these are taken into account, you would find it costs anywhere from \$2 to \$3 to get \$1 to the families of those who have been injured or killed, especially when the ambulanee chaser has secured his percentage.

When you add, also, that this system leaves a very large proportion of those who are injured, and of the dependents of those who are killed, without compensation, thus compelling the community to take care of them, and, in fact, putting upon us the burden of that support in its most deleterious form, you see that we have, both from the standpoint of direct and indirect cost, considering the expenditure through public and private charity, with all the pauperization which that implies, the most wasteful system that could be conceived of if Satan himself had set himself at the job of devising one for us. I cannot imagine, therefore, how anything we may do in the matter could, by any chance or possibility, fail to be an improvement.

MR. THOMAS V. KEENAN: I speak as a representative of the workmen of the Postoffice Department of the United States government. The Gillette bill provides for contributions on the part of the employes and would work many hardships. There is need of a retirement measure. The twenty-third annual report of the Civil Service Commission, after a most thorough investigation, which only applied to the city of Washington, states that the loss to the Government "because of the many old civil servants who, through advancing years, were no longer able to do effective work," was \$400,000 a year. In round numbers, there are 30,000 employes in Washington. The commission, unfortunately, presented no figures for the entire government service, but it would be fair to assume that the loss is equally as great throughout the Union, and as there are 300,000 employes throughout the country, the loss would be estimated at about \$2,500,000 per annum.

The cost of a proposed pension system for government employes, as proposed by the Hon. Joseph Goulden, in the last session of Congress, estimated on the same lines as the Pennsylvania Railroad,

but allowing a pension of 50 per cent. of average pay instead of less than 40 per cent allowed by the Pennsylvania Railroad is as follows:

Number of employes	300,000
Number of pensions (2 per cent.).....	6,000
Average annual pay of government employes.....	\$750
Cost of pensions of 6000 employes at 50 per cent. of average annual pay	\$2,500,000

If the United States Government is losing every year \$2,500,000 because there are so many old civil servants who, through advancing years are unable to do effective work, and the cost of a civil pension for 6000 government employes, or 2 per cent. of the entire working force, would be \$2,500,000 a year, what would be the cost of civil pension to the United States Government? *Not \$1* and the efficiency of the government service immeasurably improved.

Advocates of the contributory plan hold that Congress would increase our salaries and that the cost to the employes would be very small; in other words, it is "robbing Peter to pay Paul." Congress is not so amenable to increasing salaries. Prior to the classification act of 1907, there never was a law upon the statute books providing in any way for the automatic promotion (*i. e.*, increases in salaries) of postoffice clerks. This act of 1907 superseded what was known as the act of 1889, which simply established certain minimum and certain maximum salaries for the different grades of clerks. There had been an organized effort throughout all these years to get a substantial increase, but it was not until 1907, when Congressmen increased their own salaries 50 per cent., that we got ours. Moreover, if the Gillette bill brought about the desired small increase of salaries to make up for deductions for pensions, the cost to the Government would far exceed that of the straight-pension system and shock the public sentiment, which is supposed to be against a straight pension.

Another thing to be considered in estimating the cost of the pension systems is the saving in salaries by retiring the already superannuated. If the figures from the Commerce and Labor Bulletin, No. 94, are correct, under the straight-pension system there would be retired at once about 6500 employes, costing in pensions about \$3,040,000 a year. But the salaries of these 6500 employes, on a basis of \$1000, amounted to \$6,500,000 a year. Therefore, we have a saving of \$3,460,000 a year in salaries.

The honored Secretary of the Treasury states that there is no life in the movement among the employes. I wish to state that I had the honor to be a representative from the Philadelphia branch of United States civil service employes at the last two conventions of the United States Civil Service Retirement Association, and, that, although as in all great movements there is always opposition all agreed as to the retirement of the superannuated employes; but when it came to the mode of retirement, some few, and a very few, were in favor of a contributory plan, while the great majority were in favor of a straight out-and-out pension, such as the largest corporations of to-day are giving, viz: the Pennsylvania Railroad, the International Harvester Company, the United States Steel Corporation and many others.

From an employe's standpoint—take my own case, for instance: I have my family to take care of and, with the high cost of living, my salary is just paid out, dollar for dollar, and I have no chance to put away anything for the future. What chance would I have if the contributory retirement measure should become a law.

Under present conditions of salary and living expenses, it is the exceptional government employe who can maintain more than one savings fund. It is surely the judgment of the individual, not of the Government, that should determine whether that fund shall be in a bank, an insurance policy, a building and loan association or other investment. An insurance policy, for instance, would be safer for his family, because if he should die before the age of retirement, and the contributory scheme is based somewhat upon the probability of his doing so, his annuity would be lost, and his wife would receive, at $3\frac{1}{2}$ per cent. interest, $2\frac{1}{2}$ per cent. less than the possible value of his total assessments, which might themselves be, according to the time of his death, merely a year's accumulation, or less. To the younger employes any reliable insurance company can offer a better provision for the future. A man of twenty-seven years, drawing \$1200 a year, would be assessed for the Gillette fund about \$80 a year. He could buy a twenty-year endowment policy for \$40 and less per \$1000, and would have both the protection for his family during that term and the cash at the end of it. A twenty-year payment life policy would give him a cash return probably of 13 per cent. on his premiums in a good, dividend-paying company, or would give his heirs twice as much as he had paid in.

But the Gillette bill is compulsory. Not only would the employee on small salary, or with large expenses, be deprived of choice in his investment according to his individual needs, but many a man and woman now carrying an insurance policy or purchasing a home would be compelled to give up these undertakings. This would mean loss, both immediate and ultimate. Moreover, almost any kind of investment would be available to secure a loan in case of emergency or sickness. The Government's rigid guardianship by preventing this would be cruel in such cases.

Mr. Gillette, in his report to accompany H. R., 22,013, known as the Gillette bill, says, "The apparent advantage of straight civil pensions is its simplicity in meeting the problem and the *attraction* which it gives the service." I feel that Congress cannot be too urgent in enacting a straight-pension plan, if for no other reason than the attraction it would give to the government service. Government employees are not too well paid, many men who are bright, active and ambitious are constantly leaving the service for better-paying positions with private corporations, which hold out brighter prospects of advancement.

MR. E. C. TERRY, of New Haven, Chairman, Joint Brotherhoods' Legislative Committee of Connecticut, composed of and representing, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railroad Conductors, the Brotherhood of Railroad Trainmen, and the Order of Railroad Telegraphers:

I want to raise my voice here first to answer the gentleman who said that when employers of labor adopt a pension system for old aged and incapacitated employees, they do it through charity, and to applaud the gentleman who said such a system was not in a sense a charity, but was done for the men in recognition of their previous worth, realizing that when wages were paid to them, they do not by any means pay all that is due, even though the wage was estimated at so much per day or so much per hour—the pension system is rather a wage deferment. Those employers, like the New York, New Haven and Hartford Railroad, where the men are employed whom I have the honor to represent, do not think they established a charity when they inaugurated a pension system wherein no contribution is required from the employees or pensioners, be-

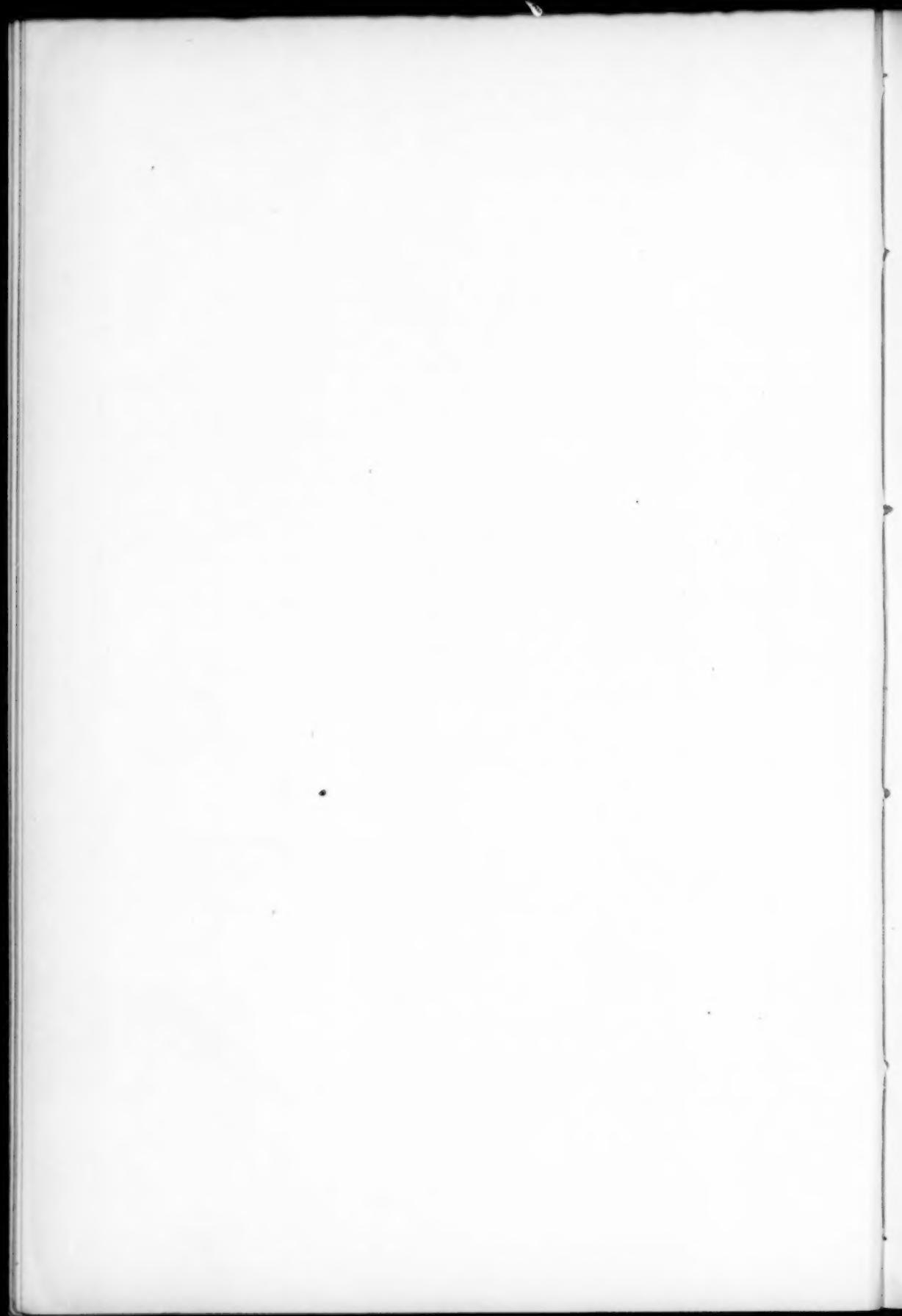
cause they realize and appreciate that their men never were objects of charity; and they realize that their men have too much of genuine American independence to accept anything that savored of charity. They realize, too, that in a pecuniary sense, the presence of experienced railroad men, able to handle trains at high speed over a four-tracked system congested at all times by commerce, is the greatest asset an employer can have; and, therefore, they have established a pension for them when they arrive at a certain age and their capabilities are at an ebb, believing that they are paying them something of their wages that they did not need in health.

If anyone has an idea that the workmen want charity in their old age, I hope they will permit of correction. Millions are coming to this country through the several ports, looking for work, but when you get the trained American, you want to regard him from a different angle, and contemplate the awfulness of this word picture—that if by a sweep of the hand all of the millions of arms of labor should become paralyzed and unable to perform their industrial functions, what a terrible industrial and social calamity would happen in this world.

Contemplate all of the iron, all of the silver and other ore which the mines contain, and without the magic hand of labor what does it all amount to?—Nothing but rust and decay.

PART TWO

*Industrial Accidents and their
Prevention*



PREVENTION OF INDUSTRIAL ACCIDENTS¹

BY HONORABLE CHARLES NAGEL,
Secretary of Commerce and Labor, Washington, D. C.

Ladies and Gentlemen: It is painfully distressing of course, to hear the announcement which has just been made.² I had not heard of the disaster until a few moments ago; and I cannot refrain from saying to you, that if no other word were uttered here this evening, the mere recital of that tragedy is in itself an all-convincing argument for the need of meetings of this kind, and for the carrying out of the purposes which you have in mind. Mere declamation counts for little. We are sufficiently conversant with the general facts. What we need is action. We know that the percentage of accidents in our country is unreasonable, and we know that it is time for private enterprise or public demand to correct this.

The great enemy of this country is waste. While everybody admits this, and we assert it glibly, we fail to appreciate that this waste exists not only in a material sense, but that the greatest waste consists of the loss and dissipation of human life and energy. We see it on all sides. Take any subject you please. Take the child. We must know what the waste in child life is. We make our investigations and we render our reports, and yet, what comes of it? The Federal Government inquires and sends broadcast the information; but there are forty-six state jurisdictions to deal with, and very few of them go into the subject. It is not only the child of the factory, it is the state of every child left unprotected by the parent. Our houses of refuge are intended to afford protection. But we are slow to recognize that it is in the interest of the state, as a mere proposition of economy, to get the child on the right side of the accounting, instead of letting it slip to the debit side. It is all a matter of book-keeping, it is all a question of economy or of waste.

What is true of the child is true of all human beings. We

¹ Introductory address of the presiding officer.

²In calling the meeting to order, Professor L. S. Rowe, the president of the Academy, said, "You have already heard, probably, of the unfortunate accident at Scranton to-day, when seventy-five miners were entombed in one of the mines in that region."

cannot deny that the list of accidents and the amount of waste are out of proportion. We need and we must have regulation and control of labor and the conditions under which men and women live. We must realize that there is a great field of activity in which the individual cannot protect himself; and just so soon as the individual cannot stand for himself in the protection of his position, it is time for the general public to step in for the general protection. Of course, I appreciate that the proprietor is remedying many things. I know that the situation in many respects is better than we ourselves suspect. I know there are proprietors who are constantly improving, who have abandoned the old system of litigation. I could point to a proprietor who, for fifteen years, has employed three thousand men without trying a lawsuit for damages, all without the aid of legislation. But there are other proprietors, and it takes the Government to establish the rules of the game in order that competition in this field may be as fair as it is in others. That is the reason for law.

I know that the State may go too far. I know that the tendency at the present time is to urge the State to go too far, but I also know that individual men who are in control have lagged too long, and have invited the storm that has come upon us. The two forces must meet and agree upon some rational basis. Something is bound to be done.

The Government in its contracts with employes has a comparatively easy question to solve. It has only to make its own conditions in its own contracts subject to acceptance by the employee. It can use a pension system if it will. When it comes to a private employer, in my judgment the question is very much more complicated. I doubt whether the State should make compulsory a pension system. I doubt the authority to do it; but I have no question that the State can establish a rule of action, a tribunal, a system under which the proprietor and the employee may express their own agreement. That much can be done and that much, in my judgment, will have to be done.

We all prefer to trust to the individual initiative and enterprise. I do. I prefer to be an individualist. But the more I have seen of life, the more have I come to recognize that there are those who fall out of the procession, who cannot stand up alone, and for whom the State must intercede to some extent. I believe in the progress of

private enterprise; I believe that a railroad, which has not for an entire year had a single accident, has done more for humanity and economy than can be accomplished by all the legislation to regulate rates. But the railroad system, that so manages its affairs as to be able to report not a single accident in a year, has to compete with the railroad system that does not do as well; and it is safe to say that the possibility of attaining this standard once recognized, we must insist that all systems shall come up to substantially the same standard. That is a proper purpose of legislation.

We are forced to consider the question of providing for superannuated employes; and we must deal with the question of fair protection to those who are still employed. The question is, how shall it be done, reasonably, rationally, or shall we wait until a storm overtakes us? We may just as well remember that the greatest force for unreasonable legislation is the failure of our citizens to appreciate the force of the demand for a better ethical standard in public and private life. That is the situation. You can see the demand grow from day to day. How was the first protest for the injured employee made? What was the form of response? Unreasonable verdicts by juries that were angry and did not respect rules of law. Every lawyer who has tried such cases knows that. What was the next protest? Legislation. Three-fold damages to emphasize public opinion. What is the same response? Rational preventive legislation; and this is what you have to consider now. What are the remedies and what is the relief; what is it fair for the State to do, and where must the State stop so as to provide fair protection and to permit of the development of the individual for his own welfare, and through him for the welfare of the community?

INADEQUACY OF PRESENT LAWS CONCERNING ACCIDENTS

BY JOHN HAYS HAMMOND, LL.D.,
New York.

This is a large question, and one which at the present time is attracting the attention of every state in the Union. Indeed, eleven state commissions are now inquiring into the subject, and formulating measures for the solution of this transcendently important problem.

The recent decision of the Court of Appeals, declaring the New York law unconstitutional, has added much to the complexity of the situation.

The number of men and women annually killed and maimed in the industrial occupations of America is greater than in the bloodiest battles of history.

The annual fatalities, for example, in the mining industry in this country, are nearly three per thousand employed, and, indeed, in the case of iron mining, much to your surprise, for most of you connect mining fatalities with coal mining, they exceed four per thousand employed. Compared with accidents in similar occupations in Europe, these figures are very much higher, and do not reflect credit on our American laws relating to the supervision of this industry.

By unfortunate circumstance, or coincidence, the terrible loss of life, upwards of 150, which occurred yesterday in the mines of Pennsylvania and Alabama, lends sad emphasis to this stricture. Two of the men who gave their lives in attempting rescue work accompanied me only two weeks ago in an examination of the mines of Scranton, where the disaster yesterday occurred.

It is impossible to ascertain the trade mortality statistics for our country, but the number of fatal accidents, among adult males in all occupations in the United States, is estimated at 35,000 annually, and unquestionably, by far the greater part is to be classified under "Fatalities in Trade."

While there can be no doubt that the enforcement of adequate

preventive measures would greatly reduce the casualties, nevertheless there is in many trades an irreducible minimum, owing to their inherent hazards.

If a manufacturing company be justified, as it undoubtedly is, in charging against the cost of production the breakage and the wear and tear of machinery, does it not seem logical to add to the total cost, that of the wear and tear of human life?

To attain high efficiency and economy in industrial production, it is of vital importance that friendly relations between employer and employee be established and maintained. This, I can say as a man who has had large experience in handling labor. Therefore, even from an economic point of view, every effort should be made to eliminate just causes of grievances, and there can be no question that the present employers' liability laws, from the injustice inflicted upon employees are provocative of serious friction. For this reason, then, and irrespective of many other important considerations, as, for example, the conduct of industrial operations in a humanitarian spirit, and the prevention, in the interests of the community, of labor troubles, this problem deserves the earnest consideration of all citizens in its solution.

The study of the present laws as to employers' liability will convince any fair-minded man that they are—and I do not think I am overstating the case—iniquitous. The present laws not only involve cruel delay in the way of relief to the unfortunate sufferers from industrial accidents, but result in the diversion of the greater part of the relief fund provided by the employers into the pockets of unscrupulous professional claim agents and lawyers of ambulance-chasing proclivities. Our laws on this subject are obsolete and are far behind the European practice. To put it mildly, they are a disgrace to our country.

BURDEN OF INDUSTRIAL ACCIDENTS

BY JOHN MITCHELL,
Vice-President American Federation of Labor.

During recent years the problem of industrial accidents and their prevention, and the question of compensation to workmen for losses caused by them have provoked wide public discussion, as a result of which the Federal Government and several state legislatures have appointed commissions to investigate the causes of such accidents and to devise some legal system of automatically indemnifying workmen for losses caused by them.

These subjects concern, in a very large way, all the people of the state and nation, although they affect more immediately the workingmen, because it is upon them that the burden falls with crushing weight; it is they and their dependents who suffer the direct and terrible consequences of such accidents. The greatest disaster that can befall the family of a wage-earner is to have the father and bread-winner carried lifeless into his home, and the shock of this calamity comes with added force when the death is due to an industrial accident—yet in our country this tragedy is enacted more than 100 times each day, more than 35,000 times each year!

While the bread of the laborer is earned in the sweat of his brow, it is eaten in the peril of his life. Whether he work upon the sea, upon the earth, or in the mines underneath the earth, the laborer constantly faces imminent death; and his danger increases with the progress of the age. With each new invention the number of killed and injured rises. Each new speeding up of the mechanisms of industrial life, each increase in the number and size of our mighty engines, brings with it fresh human sacrifices. Each year the locomotive augments the number of its victims, in each year is lengthened the roll of the men who enter the dark and dampness of the mine, never to return to their homes and loved ones.

Many are killed without violence; thousands of wage-earners lose their lives in factories, mills and mines without the inquest of a coroner. The slow death that comes from working in a vitiated atmosphere, from laboring incessantly in constrained and unnatural

postures, from constant contact of the hands and lips with poisonous substances; lastly, the death which comes from prolonged exposure to inclement weather, from over-exertion and under-nutrition, from lack of sleep, from lack of recuperation, swells beyond computation the unnumbered victims of a restless progress.

It is, of course, inconceivable that the gigantic industrial movements of the American people should be conducted without some fatalities. The industrial structure is a huge machine, hard running and with many unguarded parts, and many of the fatalities, many of the deaths in general are simply and solely the result of conditions beyond human control, and inseparable from the ordinary course of existence. But thousands upon thousands of easily preventable accidents and fatalities occur each year, and it is from these that we should strive to secure relief.

In the United States the number of persons killed and injured is not even officially counted, but Mr. William Hard, a well-known writer, credits the American Institute of Social Service with the statement that 536,165 workmen are killed or injured every year in American industry, while Mr. Hoffman, statistician of the Prudential Life Insurance Company, has estimated the annual number of industrial accidents at approximately two million. As a matter of fact, however, the death roll of industry is longer than is evident from obtainable figures. No one can compute the number annually yielding up their lives, or compelled to become a burden upon their friends or relatives or dependent upon the charity and munificence of society, who have come to their death or disability as a result of disease contracted in their occupations.

It is a strange commentary upon our boasted American civilization that in the United States nearly three times as many persons, in proportion to the number employed, are killed or injured in the course of their employment, as in any other country in the world.

In pointing out the evils that exist, I do not wish to convey the impression that society is unwilling to correct the wrongs that have grown out of our marvelous industrial development. The difficulty is that society does not understand the gravity of the situation. There is nothing sensational or dramatic in the killing of a workman here and workman there, hence the public is not startled and shocked as it would be if 500,000 men were killed or wounded in some great war, or even if their death or injury were caused by a series of earthquakes, fires or floods.

The American people are generous to the afflicted, they are sympathetic with those in distress, they respond with a golden stream to every great disaster that overtakes any section of the people in any part of the world, and if they understood the alarming and unnecessary loss of life and incapacitation of workmen that occur day after day, year after year, in the peaceful conduct of our industries, I am entirely convinced that they would rise in righteous protest and demand and insist that, without regard to cost in money, every precaution which it is possible for the human mind to conceive should be exercised in protecting the lives and promoting the health of the toilers and in providing a decent compensation for those who fall victims to the hazard of industrial pursuits.

Regrettable and alarming as is the number of industrial accidents and fatalities attendant upon the conduct of our industries, yet we might reconcile ourselves to conditions even as they now exist if it were not possible, by the exercise of reasonable precautions to reduce the number of industrial accidents; but when we observe the number and ratio of workmen killed and injured in the industries of the United States, as compared to the number and ratio of workmen killed and injured in the industries of other nations, we are led to the inevitable conclusion that if it cost more to kill a workman in America than to protect him, as it does in Europe, the American workman would not be killed, he would be protected; and the number of industrial accidents would be reduced at least one-half.

As an illustration of what has been accomplished in Europe through wise legislation, and as an evidence of what could be accomplished by proper legislation in the United States, your attention is directed to the fact that, taking all the mining countries of the old world, the average annual number of industrial fatalities is 1.45 per 1,000 employed, whereas in the United States the average number of mining fatalities is 3.46 per 1,000 employed. In other words, for each 10,000 men employed in the mining industries of European countries, 14 are killed annually, while for each 10,000 employed in the mining industry of the United States, 34 are killed annually. In considering these figures it is important to know that from the standpoint of natural conditions, mining is no more dangerous in the United States than it is in the countries of the old world,

therefore the disproportionate number of mining accidents in the United States, as against all European nations, can be attributed only to inadequate laws and imperfect regulations; and as, in respect to accidents, the mining industry is typical of all industries, it becomes apparent that in legislation we have failed to protect our wage-earners with the far-sighted statesmanship that has characterized the lawmakers of other nations.

In order that we may extricate ourselves from the humiliating and degrading position we now occupy in respect to this question, it is imperative that the factory and mining laws of all our states—which at the present time are wholly inadequate—should be greatly extended and should be enforced with the utmost vigor. Employers should be required, under severe penalty, to equip machinery and working places with every practical safety device it is possible to secure. And the state itself should establish museums of safety devices and industrial hygiene, in which should be exhibited drawings and models of all safety appliances in use in this and other countries. Furthermore, the force of factory and mine inspectors should be largely increased, the inspectors should be removed from the sphere of political influence, and schools should be conducted in connection with the museums of safety devices, in which inspectors could be thoroughly trained in the work the law requires them to do.

Here let me call attention to the fact that in an address delivered the day before yesterday, in the City of New York, the statement was made that there were fifty per cent more game wardens than factory inspectors employed by the State of New York. I do not wish to suggest that the protection of game and fish is not important, but I do mean to suggest that there should be more inspectors to protect human life than to protect the birds and the fishes.

What the working men desire and demand is not so much compensation for injury, as prevention of injury. It is all very well to receive \$1,000 for the loss of an eye or the loss of a leg, but it is much better for the man, as it is for society, that the eye or the leg be not lost.

However, the workman who is killed or injured in any industry should receive from that industry, either directly or through his heirs, a suitable compensation, whether the injury be due to the negli-

gence of the employer or not. It is inhuman to permit disabled workmen to lack for the necessities of life, it is inhuman to permit widows and orphans of men who have died in the performance of their duty to be left without suitable provision for their future maintenance.

I believe that industry should bear the burden of the pecuniary loss sustained by workmen as a result of industrial accidents, just as it is now required to repair its machinery and to offset the losses caused by depreciation in the value of its plants. The workmen and those dependent upon them are now, and will be under any system, required to bear all the physical pain and mental suffering; of this they cannot be relieved; for this they cannot be recompensed; but they should be relieved of the harrowing fear of hunger and want, they should be guaranteed against the humiliation and degradation of becoming objects of charity.

And again, may I say parenthetically, that what the miners down in Scranton required, was not so much compensation, as prevention. The one hundred men who gave up their lives yesterday, in order that the coal industry should go on, might be living to-day if proper regulations for their protection had been enforced. And what a sad thing it is to read this afternoon of a hundred and fifty convicts killed through an explosion in a coal mine in Alabama! One might think he were reading the history of France in the days of its worst despotism. One hundred and fifty convicts in the mines! It makes one think of the galley slaves! What a shame it is that convicts must work in the mines! A free man has some chance to protect himself. A convict has none. A free man may refuse to work. The convict must work. And I trust that this disaster in Alabama will do there what a like disaster did in Tennessee, that it may cause the State of Alabama to remove from its statutes the disgraceful law that sentences its criminals to work in the mines.

If I may ask your patience a few minutes longer, I should like to treat briefly of one phase of this subject that I have not heard discussed to-night—although perhaps it has been discussed during the other sessions—and that is the cost. The question of how much a compensation system would cost in money is important both to the workmen and the employers. It is, of course, impossible to say what the exact cost would be if we should abandon our

present system of liability and substitute for it an automatic system of compensation. However, we find that during the eleven years from 1894 to 1905, the employers liability companies of the United States took in \$99,959,076 in premiums from American employers. During this period these companies paid out in the settlement of claims of injured workmen \$43,599,498, or 43 per cent of the amount they took in. Of the 43 million dollars paid in settlement of such claims, it is safe to say that 35 per cent was expended by the injured workmen in the payment of attorneys' fees and court expenses; so that, in the final analysis, the injured workmen received less than 30 million dollars out of the 100 million dollars paid by American employers in premiums to liability companies. Allowing 15 million dollars for the administration of the insurance companies and for reserve, it would mean that fifty-five million dollars were wasted—were worse than wasted—because the money was used in burdening our courts with litigation and in delaying or defeating the settlement of claims, many of them just claims, when it should have been used, and would have been used under a wise compensation system, for the immediate relief of the men and their families who are the victims of the hazard of industrial pursuits.

The matter of waste in our present system is illustrated in a story told of a Chicago workman, employed in the building industry. He fell from the building, and after being assisted into an ambulance by several of the contingent fee lawyers who were there, and having made a contract with one of them to prosecute a suit for damages, he was taken away. Some three months later his lawyer called at the house, and said to him, "Well, I have settled the case. I got an award of \$1,500"; and he handed the workman \$500, and a receipt for \$1,000. The workman looked at him with an expression somewhat dissatisfied and surprised, whereupon the lawyer said, "Why, what is the matter with you, do not you think I have won a good case?" he said "Oh, yes, you won a good case, but I just was wondering which one of us it was that fell off the building."

Let me tell you an incident that is not at all ludicrous. Down in one of the Southern states, a short time ago, a ten-year-old girl was employed in a cotton mill. One day she got caught in the machine and her arms were torn out. Her parents sued the employer for damages, and when the case came to trial, the company's

lawyers made a motion that the suit be dismissed on the ground that the girl had assumed all the risks of her work. The judge entertained the motion and dismissed the case, deciding that the girl, ten years old, knew the dangers of her work and, therefore, had assumed all its risks! For that ten-year-old girl to know the dangers of her work and be required under our system to assume all the risks—I should be the last one to criticise the courts—I got into trouble once—but I would not have rendered that decision; (and perhaps I would not be a judge next day), I would not say that a ten-year-old girl knew the dangers of her work, and must assume all the responsibility of having her arms torn out.

Referring to these figures of \$100,000,000: I am not prepared to say that even if the entire one hundred million dollars had been paid to the injured workmen, it would have been sufficient to have indemnified them for their losses; but I do believe that it would not have required very much more to have compensated them on the basis of the British Workmen's Compensation Act.

It would seem to me that from every consideration of sound business judgment, practical economy, and fair dealing between man and man, we should not hesitate longer in abandoning a system that has been productive of so much misery and hardship, to say nothing of the friction and ill-feeling engendered between employer and employee. Under our present system an injured workman is compelled to sue the only man on earth upon whom he has a moral claim for employment, whereas under an automatic compensation system, such as prevails in foreign countries, a man receives as a right, not as a benefaction, a definite amount of money—a sufficient amount to tide him or his dependents over the period of greatest distress.

During recent years our statesmen, scientists and politicians have been loud and earnest in their protestations against the waste and exhaustion of the nation's natural resources. The conservation of the material wealth of the nation is a matter of deep concern and of vital interest to our own and to future generations, but, in view of the fact that 536,000 workmen are killed or injured every year in American industry, is it not high time that systematic and effective efforts be made by the state and national governments to protect and conserve our human resources—the lives, the health, and the happiness of the men and women and children of labor?

INJUSTICE OF THE PRESENT SYSTEM

BY JAMES BRONSON REYNOLDS,
Assistant District Attorney, New York.

The Workmen's Compensation Act of New York provides that employers in certain extra hazardous occupations shall be required to provide compensation to workmen in case of all accidents, unless the responsibility of the workmen for serious negligence is apparent. This bill, before it was passed by the legislature, was most carefully considered. It received the endorsement not only of labor organizations, but also of leading employers, some of whom were affected by the terms of the bill. All the provisions of the bill were carefully considered, with an earnest desire to see that it imposed no unjust obligation upon any one. In spite of such careful and detailed consideration of the principles underlying the bill and of their application, by the Commission, by the Legislature, and by citizens whose comment was invited, our Court of Appeals decided by an unanimous vote that it was unconstitutional.

I recall a remark of Thomas Carlyle, to the effect that if you are going anywhere you must start from where you are. In a Hibernian sense the Court of Appeals must have had this in mind. Since it was not going anywhere, it did not start from where we are. It started from the old common law of three or four centuries ago, and coming down to this legislation pronounced it highly revolutionary. From the old common law point of view I have no doubt they were right. Since the day when the common law was the law of the land of Great Britain, conditions have revolutionized life and conduct, and if our courts are to enter the field of economics and determine the propriety or impropriety of laws in relation to social conditions and social well-being, they ought to consider the social conditions of to-day, the social legislation which has recently been passed, and the spirit as well as the letter of our national and state constitutions. And I believe that if our Court of Appeals of the State of New York had been as well informed regarding the social conditions of our time and the social thought of our time, as it is regarding legislation in the past and in the present,

it would have rendered an entirely different decision. Without attempting to pass judgment on the wisdom or unwisdom of the particular law in question, I do believe that the time has come when we must insist that we shall be free, within certain reasonable limits, to pass whatever laws seem to us to be right and just, that are manifestly for the welfare of the people of our time. If our courts refuse to recognize the justice of this determination, and declare that the constitutions of our states, drafted to secure and maintain the liberty of our citizens, make impossible such social legislation for the promotion of well-being and social progress, then the sooner our constitutions are amended the better.

Now, I wish to make just two points in relation to the prevention of accidents. I believe a compulsory workmen's compensation law to be a most valuable agency for the prevention of accidents. Such a law would make apparent the enormous size of the bill now being paid to settle the losses arising from accidents to industrial laborers. Of course, the community already pays the bill, but it pays it blindly, only slightly appreciating its size, and the bill paid by the community is much larger than would be paid under a workmen's compensation law. The full amount of the present bill no one can calculate.

Some of us, who have to do with the machinery of justice, once in a while come across a case of a boy or girl with life ruined which we can trace back to the time when the wage-worker of the family was thrown out of employment. The son or daughter who had been getting an education to enable him or her to make an independent, honest livelihood was compelled to go to work without proper education, and because of inadequate preparation for life, became one of the unskilled and frequently unemployed, unfortunate and dependent, or fell into the delinquent class, and turned up a common criminal. We pay these remote items of the bill, as well as the direct medical and hospital charges and charity relief. But if only the direct charges were placed on the trade under a workmen's compensation law, the amount would be so great and the burden so considerable that employers and employees would make a more united effort to prevent the occurrence of accidents.

But more preventive still in my judgment would be the effect of a workmen's compensation law, if the burden were distributed equitably on the three parties in interest, viz.: the public, the em-

ployer and the employee. Under any compensation law all these will bear their burden, but the distribution of the burdens which are unassigned will not be equitable and the beneficial effects will not so surely follow. But, if the respective amounts are determined fairly and are imposed directly, the stimulus to diminish accidents will surely become greater. The public, to reduce its share of the burden, will pass stricter laws to prevent accidents, and be more interested in their proper enforcement. Employers will be more liberal in installing, on their own initiative, accident-preventing machinery, and will be more careful to enforce their own regulations. Finally, workmen will be careful themselves, and more insistent on the carefulness of their fellow-workmen to avoid accidents. The burden directly and constantly visible will produce the results which regularly have followed from direct taxation. Thus the increased vigilance of employers and employees, and the greater zeal of legislators and executives would work together for the common good, and this good would follow from the imposition of a workmen's compensation law whose burdens should be equitably distributed and directly imposed.

NECESSITY FOR SOCIAL INSURANCE

By JOHN GRAHAM BROOKS,
Cambridge, Mass.

I have never been, in all these years, to a public meeting which has given me so much hope that some real constructive good may come out of it as this recent gathering of the Academy. Mr. Hammond called our American Employers' Liability law by its proper name, "iniquitous." And we all seem to be agreed about it. In the hope of getting a little more leverage, and even not being ashamed to make a kind of moral appeal, I have set down notes on a fairly long experience. It is pretty nearly twenty-two years since I was asked by Carroll D. Wright to go to Europe to study this question. It was hard work for two years, with much knocking about Europe, and since then I have done my best, at least, to keep track of the insurance discussion. Soon after that we had a public meeting in Washington on this same subject, but it was then like talking to the stone-deaf; and now, to come into this new atmosphere shows that the change has come—a change that makes elementary justice a possibility.

I want to tell you the first thing that startled me when I tried to study this question twenty-two years ago in Germany. It is commonplace to us now, but it was not then. It was of a man working in certain dangerous trades in Germany, where his chances of being crippled or killed were fifteen times as great as those of a man working in certain factories or in a sugar refinery, and both got practically the same wage. Society ignorantly permitted an injustice like that. What should we, as parents, think of ourselves for allowing a son to choose freely in those two situations, to say: "You have to earn your own living; but at one trade you run fifteen times the chance of being crippled and get no more pay." You would call a parent that did that inhuman; but that is exactly what society has long been doing in this country. After I came back to America there came into my experience the case of a young man with a family. He crawled under a trolley car every day, as he had to, to examine the car. One day the conductor started it, and left

the man's leg, the lower part of it, pulp. It had to be amputated twice, followed by extreme suffering, and then the case was held up by litigation nearly seven years. But for years of outside effort, he never would have got a cent, because we were playing this perfectly vicious game of "assumption of risk" and "contributory negligence," under the complicated conditions of modern industry. I saw most of his property paid out, the look of pain grow on the face of his wife. In the end, by a sort of private appeal, that great corporation, which I am not blaming, gave him scarcely enough money to pay the doctor's bills. I began at that time to make collections of every authoritative statement of accident that I could get. They run into thousands. If we multiply them many times yearly, we get some notion of the vast tragedy that is made possible by legal imperfections. We are here practically agreed that these are to be cleaned out, all that "contributory negligence," the "fellow servant doctrine," the "assumption of risk"—all has to be cleaned out, like poison from the system.

I once heard of an Englishman who was asked to give money to go to India to some mission where he had been. He gave a shilling, and took out a gold sovereign in the other hand. "What do you keep these apart for?" he was asked. "That shilling," he replied, "is to go to the heathen, and this sovereign is to pay the bills for getting it there." A great business has reported that under our present laws one dollar in four gets to the injured. Are we to tolerate a waste like that? The fact, and we have got to understand it clearly, is that every cent of this expense has got to be borne, probably first by an insured group of employers, and then go straight where it belongs, into the price of the product. The essence of the German system, in my opinion, we have got to take, though we shall have to adapt it to our conditions. We shall try many voluntary schemes and, except for those who are very strong and least need insurance, we shall find that voluntary schemes do not suffice; and, if I had time I could show you in several countries any amount of attempts at voluntary schemes, that have been a history of failure. In my opinion we have got to be prepared for a very large extension of compulsion, even for the sake of employers, but chiefly for the mass of weaker workers. I have a letter in my hand that I cannot read, because it is so long, from one who knows more about the subject we are talking about than any other living man. The gist of

that communication is this: "Why do not your universities get competent students to take a record from nine or ten different countries and classify the experience for your own needs? Get this done by the ablest men in your universities, so that when the question comes up in different states, you have facts about every single phase of this legislation? Here we have a vast experience boiled down, country by country, so that all can look at it. I am not asking you to accept our system, but I am asking that you will look at the work of more than twenty years, in eight or nine different countries, where every variety of insurance has been tried." This suggestion is too important to forget.

In concluding, Dr. Talcott Williams rather took my breath away this morning. I have been criticised over and over again for saying that the battles of the Civil War were hardly more deadly than the devastation which we create by carelessness and ignorance in the United States. I have often said that more than half a million were killed or injured every year in our industries, and Mr. Williams said, as I understood him, a million.

The justification which a layman feels in using strong language about this inhumanity of our present accident laws is, that wherever the facts have had thorough discussion, both lawyers and politicians of highest eminence agree in condemning conditions like those now existing in the United States. It was of these that Sir Frederick Pollock said, "I think the doctrine of the American and English courts is bad law as well as bad policy." Of these same conditions (the English act of 1880) Mr. Asquith used the words, "A scandal and a reproach to the legislature, an elaborate series of traps and pitfalls for the unwary litigant, and producing litigation which, in proportion to its difficulty and cost, is absolutely barren of result." Lord Salisbury and Mr. Chamberlain both used language scarcely less severe. When the discussion began in the House of Commons, twenty years ago, scores of able men hotly defended these laws. It is now said that no first-rate man in the house will even attempt a defence. At the international congresses for the discussion of accident insurance, the part which "common employment" has paid in our legislature has invariably elicited surprise and disapproval.

Ten years ago a doctor said to me in Berlin, "Before you come over here, I shall be able to show you that we are saving human life enough, in actual days and months, enough of health and energy,

to pay all these stupendous millions that it costs." I said, "I do not believe it." Two years ago I went to his house in Berlin. He said, "I know what you are going to ask me, and I think I can prove it to you." A German member of Parliament, who has just left this country, confirmed this opinion. He said, "It is true that this pension legislation really carried out systematically, with the help of German science, has saved enough human life and health, measured in dollars, to pay the whole stupendous bill." I know no more remarkable or hopeful sociological fact than that. May it lead us, not in detail, but in general spirit to the same large measure of justice.

RED CROSS MEASURES FOR THE PREVENTION OF DISASTERS

BY MABEL T. BOARDMAN,
Member of the Executive Committee of the American Red Cross,
Washington, D. C.

Should I take a text for this short address upon Red Cross measures for the prevention of disasters, I would select the last words of paragraph 5 of the charter by which Congress incorporated the American Red Cross and defined its duties.

The entire paragraph reads, "And to continue and carry on a system of national and international relief in time of peace and apply the same in mitigating sufferings caused by pestilence, famine, fire, floods, and other great calamities." Then comes the duty to which I wish particularly to refer: "And to devise and carry on measures for preventing the same."

Therefore, the Red Cross was created not simply to provide a pound of cure, but to seek also for the far more valuable ounce of prevention.

No more serious disaster can occur to any country than the disaster of war. If, in its primary purpose, the Red Cross was organized to mitigate at such time the suffering of the wounded as a pound of cure, is it not true that in broadening the field of its beneficent service so as to render sympathetic and generous aid when calamities overtake our sister nations, it all unconsciously is providing an ounce for the prevention of war and laying a foundation stone in the temple of peace?

In a letter lately received by the Red Cross from the Secretary of State, Mr. Knox says: "On the occasions when the Department of State has brought foreign disasters to the attention of the American Red Cross its prompt and efficient action has always been most gratifying and should be a source of pride to our countrymen. In these days when the spirit of humanity and helpfulness more and more ignores boundaries, international aid in case of foreign disasters is especially appropriate and is of very real value, I believe, in

promoting that international good will with the fostering of which the diplomacy of the United States is so much engaged."

Let me speak briefly of another field of preventive work that the Red Cross has aided in this winter. Early in February the State Department inquired of the Red Cross if it could provide an expert bacteriologist for an international commission asked for by the Chinese Government, for the study and extermination of the pneumonic plague that is raging in Manchuria. After consulting with some of the most prominent physicians in this country, and with Mr. Dean Worcester, of the Philippine Commission, the Red Cross was most fortunate in securing the services of Dr. Richard P. Strong, head of the Bureau of Science in Manila, and of his assistant, Dr. Oscar Teague. Funds were cabled to Dr. Strong so that they could start immediately, which they did by the first available steamer, going via Pekin to Mukden, the center of the plague district. There they established a laboratory in connection with the plague hospital, and for six weeks, taking their lives in their hands, they have been studying this deadly pestilence so as to be of practical assistance to the international commission when it meets this month. We here, in the midst of what modern sanitation and hygiene have given us, can little realize the horrors of a plague-ravaged country nor that our own safety means eternal vigilance, and the courageous labors of such men as these.

When some serious disaster occurs like the terrible factory fire the other day in New York City, by which a large number of lives are lost at once, a thrill of horror sweeps over the country, but how little thought is given to the fact that 2,450 of our miners are killed each year and 6,772 injured, that the railroads claim some 3,000 dead and 64,000 injured. Statistics in regard to industrial accidents are neither complete nor accurate in the United States, but it is believed that five hundred thousand persons are killed or incapacitated yearly. Is the Red Cross wrong in regarding this as a national calamity, especially when it is estimated that sixty-six per cent of these accidents are due to negligence on the part of the employers or the employees?

In Surgeon General O'Reilly's preface for the Red Cross first-aid text-book, prepared by Major Charles Lynch, of the Army Medical Service, he says: "Notwithstanding the many excellent works already in existence on first-aid instruction, none of the

writers, so far as I know, has given much thought to teaching the prevention of accidents. While this subject is necessarily treated rather briefly here, at least enough is said to call attention to the importance of prevention as contrasted with cure, and for this reason it seems to me peculiarly appropriate that this book should have the endorsement of the Red Cross, as the beneficent mission of that society, like that of the good physician in treating of diseases, should be to go deeply into causes, and their responsibility for the physical sufferings of humanity, rather than to resort solely to palliative measures."

Furthermore, in the industrial edition of this text-book, which has been translated into Polac, Slovac, Lithuanian and Italian, and which is dedicated to The Industrial Army of the United States of America, many pages are devoted to suggestions for the prevention of accidents.

Those for railroad employees, for example, propose the offering of instruction in the theory and practice of safety in railroading by the company, and advocate safety appliances, reasonable hours, common care on the part of the employees, etc. For passengers and others a list of "nevers" is provided. "Never to cross a railway at a grade crossing before making sure that no trains are approaching." "Never jump on or off cars in motion," and finally, "Never forget that carelessness on your part in regard to these precautions not only endangers your life but the happiness and welfare of those most dear to you."

Moreover, the Red Cross has had over sixty thousand of these precautions printed on posters and distributed to railroads, and over thirty thousand of a like nature for use in trolley cars.

In the mining section of the text-books thirteen "don'ts" are given for miners. "Don't forget to sound the roof after each blast." "Don't fire two holes at once," etc. Eight for the laborer, such as "Don't walk haulage roads; go the manway." Eight for runners, such as "Don't ride on the side of the car." Three for drivers, and three for trappers or door boys.

In the section devoted to injuries of the factory and workshop various precautions against accidents are provided: "Notify the engineer before doing any work upon the main line shafting, pulleys or belts while the engine is stopped," etc. Precautions against accidents from electricity, such as "A man should not work on a wire

or conductor with arms exposed"; "in handling circuits of over 115 volts use, if possible, only one hand, keeping the other in the pocket or behind the back," etc.

The Red Cross employs two physicians, one who devotes his time to the organizing of first-aid courses among miners and who accompanies the rescue cars of the Government Bureau of Mines; the other who devotes his time to the organizing of first-aid courses among railroad men, and who is attached to the Red Cross First-aid Instruction Car. Both these men, Dr. Shields and Dr. Glasgow, make a special point of dwelling upon the great importance of precaution to prevent accidents.

In thus providing instruction in first-aid for the great industrial army of our country, a still further act of prevention takes place—the prevention of serious consequences because of the ignorant treatment of the injured. The celebrated German surgeon, Dr. Von Esmark, most truly said "The fate of a wounded man depends upon into whose hands he first falls."

Thus, briefly, I have given you some of the measures the American Red Cross has undertaken to prevent disasters. Had you been at a miners' first-aid competition held by the Red Cross in Northern Pennsylvania, you would have seen a mine disaster illustrated in a most dramatic way. A facsimile of the mine was built above ground, the miners busily at work with their pickaxes, the flash of the explosion, the falling roof, the groaning, burned and injured men, and then the pathetic cry of the Welsh miner who came first to their assistance, "Come quick! There's a man hurted!" A cry that goes to the heart of the Red Cross and to which it seeks to respond—that cry for the prevention of human suffering and the conservation of human life.

OUR LACK OF STATISTICS

By MRS. FLORENCE KELLEY,
General Secretary, National Consumers' League, New York.

Ever since the death, some years ago, of a number of young girls in a factory in Market Street, here in Philadelphia, our honest and modest Commissioner of Labor, John Williams, has been warning us of the danger of such a holocaust in New York. The blood of those who perished in the fire in the Triangle Shirtwaist factory, their average age, so far as it has been possible to identify them, only 19 years, is not upon the heads of the factory inspectors. They never lulled us into any false sense of security. That crime is on our heads, as a callous, reckless community.

Beginning on Sunday last,¹ I have spent much time in meetings of working people in New York, called to mourn the death of the 146 workers and to devise ways to prevent similar future sacrifice. The contrast is very strong to-night. I do not seem able to adjust myself to it. I have been looking into the grave faces of working people at Cooper Union and elsewhere, and I have seen just one smile. I walked on Wednesday four hours in the rain with those who mourned. A half million working people stood all those hours in the streets in the rain. I saw just one smile, and that on the face of a drunken man. I have never seen faces so filled with concern as those which lined miles of the streets of New York, faces of men, women and youth mourning the slaughter of their fellow-workers.

We Americans show that we do not care, because we do not punish those who take life. Ever since I spent that four hours among those half million silent mourners in that silent drenching rain, in that solemn, unrelieved gloom, I have been haunted by certain questions, and I wish to put everything in the rest of my speech in the interrogative form.

The questions are these: First, whether our statistics of the deaths of working people at their work would not move rapidly toward zero if we stopped extending Christian forgiveness to those

¹This address was delivered Friday, April 7, 1911.

who kill 146 young workers, who lock their doors for fear lest a cheap shirtwaist be stolen, and themselves steal 146 young lives, or if we went back to the old Jewish law, which gave an eye for an eye, a tooth for a tooth, a life for a life. If we should apply that law in the case of the very small statistics now freshly at hand—here are 146 young lives destroyed by employers who were breaking the law in every way in which it was convenient to break the law—let us see just what lives would be called for if the working class really sent in their bill for a life for a life. Would there not come first the cruel and cowardly employers who found refuge and safety on the roof, while 146 of their young workers died like rats in the trap set for them? Harris and Blanck were the only employers in that building who refused to grant the Saturday half-holiday. If they had granted it their workrooms would have been closed and empty at the time of the fire. After the fire they moved their workrooms to another building exactly as unsafe. Again they locked the doors, placed heavy tables in front of their windows, and over-crowded the floors with machines!

Then would there not come the judges of the Court of Appeals, who two days before the fire gave leave to kill, when they announced in their decision, in the Ives case, that workmen's compensation under the new statute, would be property taken without due process of law—while life is taken as we have seen during the present month?

There is no compulsory fire drill in this country, and everyone, judges included, knows that there is none. Is it not, therefore, reasonable to suppose that sooner or later the working class will send in its bill for a life for a life, logically asking, first the lives of the employers, and then of the judges who virtually gave permission to take such risks? Would not the building inspector come next, who certified safe the top of the elevator, where a wooden beam dishonestly took the place of the required steel beam to sustain elevators which, as that building inspector knew, were the sole hope of escape in the absence of accessible fire escapes? Might he not suitably close the procession, followed only by the stockholders and bondholders of the Asch Building, who profited by the economy of that wooden beam, and the absence of fire escapes?

If the old Jewish retributive rule, a life for a life, were enforced throughout our country in this and all kindred cases, should we not have immediately the most compendious information about all deaths and all industrial causes leading to those deaths?

Some time ago a great banker of New York City was killed on a train of the New York Central Railroad. Without waiting to be sued, the company paid \$60,000 to his widow. As I walked through the rain, I thought of those deprived of their sons and daughters, mothers in the old country, patiently waiting for money to be sent to enable them to come to their children here; and I wondered on what statistical basis one could work out this problem: Charity has brought together \$81,000 for the survivors of 146 working people, who had on the morning of their death probability of life much greater than that of Mr. Spencer Trask (his actuarial expectation of life was extinct) who had no dependent children, who left his wife in such position that it was worth while for the New York Central Railroad to offer \$60,000, which she then bestowed in charity. What is the statistical ratio and the social ratio between the life of an elderly, childless banker, and the lives of 146 young workers, killed at their work? Between \$60,000, furnished by friendly agreement between the railroad and his estate, and \$81,000, furnished to the survivors of 146 young workers by charity?

A curious coincidence: It is two weeks since that fire, and there have been 26 Socialist mayors elected in these two weeks in the spring elections. I do not believe it is cause and effect, but I think it is a coincidence, a startling one. Rose Schneiderman, the cap-maker, speaking for the National Women's Trades Union League, stood last Sunday in the Metropolitan Opera House, filled with citizens of New York and working people, and said: "Citizens, the working class of New York has tried you for a long time, has looked to you for the safety of working people, and you have not succeeded, you have not made life safe for us. So I think the time is coming when the working people will have to be their own committee, and furnish their own inspectors, and carry on their own industries." In that great Metropolitan Opera House, without an empty seat, one could have heard a pin drop as she spoke. Is it not a coincidence when in the month of the annulment of the compensation law and of the holocaust, the immigrant working women who, except the children, are the most defenceless of all the workers, when they, through their spokesman, look such an audience in the face and say, "You have been tried and you have failed?"

I do not believe that we shall find much help in merely gathering statistics. I do not think that working people will continue pas-

sively to see young lives destroyed by hundreds. More women are sensitive every year to the appeal for clean and healthful, safe and good conditions of work. And with the ultimate consumer rests the fate of every industry.

As soon as the idea roots itself and spreads abroad in the land, which has expressed itself in every discussion by working people these last few weeks, that *there are no industrial accidents*, we shall begin to get full statistics of injuries. Working people speak of industrial injuries—they speak of murder. Men and women have been talking on the sidewalks as never before, not of accidents, but of industrial injuries, of manslaughter, of murder. Had this catastrophe occurred before Miss Eastman published her book, which she generously let me read in manuscript, I should have entreated her to change its title, because I believe the book to be an epoch-making discussion of industrial injuries.

Are we not as foolish to talk of industrial accidents in a world governed by law, we who are all servants of modern science, as we should be if we tried to propitiate evil spirits asking them not to injure people who are at work, or if we wore amulets to save us from the interference of evil spirits? There is one evil spirit, one figure which serves to symbolize the statistics of industrial injuries to working people—the symbolic figure of Greed.

THE THREE ESSENTIALS FOR ACCCIDENT PREVENTION

BY CRYSTAL EASTMAN,

Secretary New York Commission on Employers' Liability and Causes of Industrial Accidents, Unemployment and Lack of Farm Labor.

When I read in the newspaper the day after that terrible fire in Washington Place two weeks ago, that a relief fund had been started, that so and so and so and so had contributed so and so much, and the Red Cross had opened an office in the Metropolitan Building to "administer the fund," it turned my soul sick. When I read in the Bulletin of the New York Department of Labor, among particulars of fatal accidents in 1908 such records as this: "*Helper—flooring factory—age 18—clothing caught by set-screws in shafting; both arms and legs torn off; death ensued in five hours,*" my spirit revolts against all this benevolent talk about workingmen's insurance and compensation.

When great unforeseen disasters like the San Francisco earthquake come upon humanity by act of God, we can be thrilled and uplifted by the wave of generous giving which sweeps over the country—we can be comforted by contributing a little ourselves to aid the survivors. And when we are thinking of the deadly list of unpreventable work accidents—the blast furnace explosions, the electric shocks, the falls—it appeases our sense of right a little to realize that we are working away as hard as we can for a law which will assure a livelihood to the children of the victims. But when the strong young body of a free man is caught up by a little projecting set-screw, whirled round a shaft and battered to death, when we know that a set-screw can be countersunk at a trivial cost, when we know that the law of the state has prohibited projecting set-screws for many years, then who wants to talk about "three years' wages to the widow," and "shall it be paid in instalments, or in lump sum?" and "shall the workman contribute?" What we want is to put somebody in jail. And when the dead bodies of girls are found piled up against locked doors leading to the exits after a factory fire, when we know that locking such doors is a prevailing custom in such factories, and one that has continued in New York

City since those 146 lives were lost in the Triangle Waist Company fire, who wants to hear about a great relief fund? What we want is to start a revolution.

That is why I am glad that for once I have a chance to talk about preventing accidents instead of about paying money to the victims.

If we undertake to stop this unnecessary killing and injuring of workers in the course of industry, we must pause and consider what are the essential weapons of our campaign.

The first thing we need is information, complete and accurate information about the accidents that are happening. It seems a tame thing to drop so suddenly from talk of revolutions to talk of statistics. But I believe in statistics just as firmly as I believe in revolutions. And what is more, I believe statistics are good stuff to start a revolution with. We must know how many men are killed and injured at their work every year in every state, not only in mines, railroads, and factories, but in all the building trades, in tunnelling, in engineering work of all kinds, in the loading and unloading of vessels, in water transportation, in teaming, and all the risky occupations of the city streets, in washing office windows, in agriculture, in the business of distributing gas and electricity, in the installation of telegraph and telephone lines. We must know not only how many are killed, but how many are killed in proportion to the number employed—the relative danger of the occupation. And about each of these accidents we must find out all we can, not only how it happened, and what machinery was involved, but what time of the day it happened; how long the injured man had been working; what were his regular working hours, etc. We must try to get every fact that will enable us to analyze accidents with a view to prevention.

How can we get such information? It is comparatively simple: require each employer engaged in any industrial pursuit to report every accident to his employees in the course of work. Minnesota has had such a law for a year, and under it has been able to record all but about 5 per cent of its industrial accidents. Many employers are not used to reporting, of course; but the Minnesota Labor Department secures a first notice of almost every accident through its newspaper clipping service, and, if in the course of a few days no notice comes in from the employer, they send him the clipping

with a polite notice of the law's requirement and a blank form for him to fill out. In this way, I am told, the backward employer is soon induced to fall in line and do his own reporting. As a result of its new accident reporting law, the Minnesota Labor Department has issued the first complete study of a year's industrial accidents I have ever seen. They found out for instance, that although mining, railroading and lumbering are the most dangerous industries of the state, contracting work follows close with 37 killed and 717 injured. In agriculture, 12 were killed and 51 injured; in the operations of public utilities corporations, 19 were killed and 207 injured; in teaming, 7 were killed and 17 injured; and so on. In New York since September, 1910, accidents in the building trades have been reported, and Illinois has a law requiring all accidents of employment causing death, or disability of more than 30 days, to be reported. But with these exceptions: I believe no state goes farther than to require accident reports for factories, mines and railroads. Minnesota's new law increased their accident reports from 1,590 in 1908 to 8,671 in 1910. If in Minnesota in one year 7,000 additional industrial accidents came to light under a complete reporting system, imagine what the number would be in Pennsylvania and New York, with their population six or seven times as great.

The New York State Employers' Liability Commission found that out of 554 fatal work accidents in the coroner's files, 325 had not been reported. And out of 451 injury cases taken to hospitals, only 56 had been reported to the Labor Department. These unreported accidents were not for the most part factory or railroad accidents which should have been reported, but accidents in other employments of which the state does not pretend to keep record.

Of course, in maintaining that complete accident reports are a first essential for accident prevention, I assume an intelligent use of them. We must have a grouping of accidents around the danger points in different industries and a very painstaking impartial intelligent study of their causes by the statistician with conclusions which will be of practical use to the inspector in his next rounds—not a mere cut and dried analysis of the accidents according to whether the employers reported them "due to negligence" or "inevitable." For this work we must have a statistician who looks upon his compilations not as an end in themselves, but always as a means to

prevention. A chief statistician with a great deal of common sense and a positive zeal for preventing accidents—that is what we must have in every labor department. And we must give him money enough to do his work.

I have always had an idea, too, that the law should provide for a certain publicity for these statistics. For instance, if every newspaper were required to print once a year the particulars of all fatal work accidents in the twelve months preceding, officially issued by the statistical bureau of the labor department, would it not help to keep us interested? And, if in addition certain simple and obvious statistical conclusions were printed; such as these for instance: In 1908, out of 257 industrial fatalities reported to this department, 26 were caused by men getting caught in belting, shafting, gearing, or other machinery, which could have been guarded so as to make the accident impossible; 21 were caused by men falling down elevator shafts or getting caught and crushed between the floor or walls and the elevator, accidents which would have been impossible on properly guarded elevators. Would not such statistics, published in the daily papers over the official signature of the Commissioner of Labor, help to keep the revolutionary spirit alive in us?

I have not looked into this matter yet, but I believe newspapers are required to publish certain matters of public concern, such as tax sales. Surely, these accident statistics are of equal public concern.

The second essential is a department for enforcing the accident prevention laws, commensurate in equipment and in power with the importance of its duty. The question whether accident prevention should be the exclusive duty of a special department or entrusted to the factory inspection bureau of the labor department, along with the enforcement of child labor laws, and the inspection of sanitary conditions, is one it seems to me which should be profoundly considered, but it is not a part of my plan to discuss it here. Clearly, whatever department is expected to enforce the laws for safeguarding life and limb, should be given money enough and power enough to do it.

In New York we have a fairly comprehensive law in respect to the guarding of machinery and other measures for safety in factories. The business of seeing that this law is complied with in the factories of the state, is entrusted to the chief factory inspector, who is paid \$3,000 a year, and his fifty-two deputies, who

are paid from \$1,000 to \$1,200 a year. But accident prevention is not the only business of this force. They must also enforce the laws in regard to child labor and hours of work, and sanitation and ventilation and lighting of factories.

So much for equipment. Now as to power. The violation of a safety provision in the labor law is a misdemeanor for which the employer may be fined from \$20 to \$50 for the first offense. The prosecution is conducted by the labor department in the lower courts. How does this work out? In 1909, there were seven prosecutions for violation of the safety laws, with this result: three suits were unsuccessful; in two, sentence was suspended; in two, employers were fined. The total fines amounted to \$35.

This small number of prosecutions might, of course, be co-existent with complete enforcement of the law. But it is not. The number of employers prosecuted seems to bear no relation to the number of employers who violate the laws with regard to accident prevention. For instance, in the same year during which there were seven prosecutions, there were among the 2,947 accidents reported to the department, 779 accidents classified as follows:

Accidents due to gearing	320
Accidents due to set-screws	337
Accidents due to shafting	73
Accidents due to belts and pulleys	49
	—
	779

We may fairly assume that most of these accidents resulted from violations of the statute which requires all "gearing, shafting, set-screws, belts and pulleys to be properly guarded."

In fact, the prosecutions are used only as a last resort to compel obstinate employers, who have been given three or four distinct warnings, to comply with the order of the department. And then, after the prosecution is commenced, and even after the employer has been convicted, if he can show that he has at last complied with the law, the judge suspends sentence.

Such is the equipment and authority of the executive department to which the state entrusts the enforcement of its accident prevention laws. The same description would serve, I believe, for almost any other state. In short, factory inspection for safety has hardly been seriously commenced. Reasonable safety provisions in

the labor law continue to be violated with impunity all over the state, while the records of utterly needless injury and death go on piling up in the labor department.

Well, what can we do about it? First, it seems to me we must get into the minds of the legislators an altogether different conception of what a labor department should be. They must recognize that the administration of labor law is rapidly coming to be the most important function of government. We must give our labor department more dignity, a better equipment, more power.

Compare the salaries of the chief officers of the labor department in New York State with some other departments. Our Commissioner of Labor gets \$5,000. Our forest, fish and game commissioner gets \$6,000. Our superintendent of banks, our superintendent of insurance, and our commissioner of excise, each gets \$7,000. Compare also these items: the labor commissioner, himself on a salary of \$5,000, has \$2,400 to pay his counsel and \$3,000 to pay his chief statistician, while the Public Service Commission of the Second District, composed of five men on \$15,000 salaries, has \$10,000 to pay its counsel, \$6,000 to pay its secretary, and \$5,000 to pay its statistician.

So much for the heads of departments. Judging from the salaries paid, it is clear that the state does not yet recognize the relative importance of its labor department. But further than this and more important, the appropriation for the department does not allow for a sufficient number of intelligent well-trained men to do the actual work of inspection. There are in New York, fifty-two factory inspectors whose salaries range from \$1,000 to \$1,500, the majority at \$1,200. By covering seven establishments a day they usually manage to visit each factory once a year.

It is not remarkable that there is no real enforcement of the safety laws in factories. A yearly visit from an untrained \$1,200 man whose duty of inspection covers child labor, hours of work for women and minors, sanitation, ventilation and lighting, as well as the guarding of machinery, is not going to be very alarming to an employer who does not want to spend the time and money to make his workshop safe. Even if a violation is noted and an order for compliance issued by the labor department, his chance of getting into serious trouble by continuing to violate the law is pretty small, with only two employers fined in 1908, and three in 1909.

To put the labor department in a position to carry out the law's intent and really prevent unnecessary accidents by requiring safeguards wherever practicable, I think we must pay higher salaries at the top, high enough, for instance, to get a first-class counsel and a skilled engineer to devote their whole time to advising the commissioner in their respective fields. Then we must have a somewhat larger force of inspectors, more highly qualified for their task and much better paid, with salaries graded so as to tempt capable men to make factory inspection their life work. Thus, we could create a department with the wisdom and ability to do its work. But how can we give it power?

I should say, first, we must cease to make light of violations of the safety provisions in the labor law by classing them with petty offenses for which a \$20 fine is imposed. If the deliberate refusal to comply with a reasonable order of the labor commissioner, requiring the guarding of a dangerous machine is any kind of a crime, it is one that calls for a heavy penalty. It is difficult to see why a railroad should be fined \$5,000 for refusing to comply with an order of the Public Service Commission, while a factory owner is fined \$20 for refusal to comply with an order of the labor commissioner. The suggestion was made to me the other day that an increase in penalties, far from resulting in fewer convictions, would result in more convictions, and might largely do away with the practice of suspending sentence, for this reason: from the express provision for a petty fine for violations of the safety laws, the judicial mind infers that the law-makers did not consider the violation a serious one, and therefore inclines to indifference and leniency, whereas the duty of imposing a heavy penalty would tend to make the judge give real thought to the case. There seems to me to be wisdom in that suggestion. Indeed, it is worth considering whether we should not provide a penalty heavy enough to take these cases out of the lower courts entirely.

But nothing we can do to the system of fines and penalties will give the labor department power enough to put the safety laws into immediate effectual operation. I should like to see some state try this: First, give the commissioner power to make rules for safety in different trades, rules which shall have the force of statutes. And then give him expressly by statute summary power, in case his orders are not complied with, to call on the police and close up a

factory, prohibit all operation of it, until his orders in regard to safety are carried out, this summary power to be exercised, of course, only after due notice.

This sounds alarming, autocratic, too much like Germany. But would that power in a labor commissioner really be anything to fear? Would he be likely to make unwise use of it? Every employer against whom it was exercised would have his appeal to the courts as to whether the order of the commissioner was a reasonable one. By praying for a temporary injunction to restrain the commissioner from shutting up his shop, the employer could protect himself against grave loss and secure a speedy hearing. There is little doubt but that the court would give him every chance. And with this review in sight, there is not much reason to fear that the commissioner would make arbitrary use of his power.

It is this sort of a summary power we deem it necessary for a health department to have. A health officer can prohibit the occupation of a tenement when its unsanitary condition menaces the health of its tenants. Why cannot the labor commissioner prohibit the operation of a factory when its unsafe condition menaces the lives and limbs of its employees? It seems to me that laws in regard to safety, even more than laws in regard to health, demand this method of enforcement. A summary method is one which stops the danger at once and leaves the employer to commence an action in the courts to vindicate his right, instead of requiring the commissioner of labor to commence an action in the courts to vindicate his authority *while the danger continues*. Clearly the old way safeguards property at the risk of human life. The new way would safeguard life at a very little risk to property.

So far, I have imagined a complete system of accident reports, handled with transcendent intelligence by a superhuman statistician, and published for the enlightenment of a body of eager-minded public-spirited citizens. To this picture I have added that of a high-salaried, well-trained, fully-equipped labor department with power to make safety rules having the force of statutes; I have provided heavy penalties for violation of these rules to be imposed with discretion by judges aroused to the importance of their duty; and I have given the commissioner of labor summary powers to enforce compliance with his orders.

Now we come to the third essential—a new system of liability

known as *workmen's compensation*, which makes every serious accident a considerable cost to an employer and thus insures his invaluable co-operation with the labor department in promoting safety. After all the prevention of accidents in modern industry is too difficult a problem to be solved by statistics and statutes and summary powers; little can be done without the active co-operation of employers. In order to secure that co-operation, let us then quite frankly make the most of the economic incentive, establish a system of liability by which an employer can reduce his accident costs, not by hiring a more unscrupulous attorney and a more hard-hearted claim agent, but only by reducing his accidents.

Let the employer once realize that every accident, insure as he may against it, has its inevitable and definite effect upon the cost of production, and his zeal for preventing accidents will be constant. His superintendents and foremen will be made to see the effect of every accident upon their department cost sheets, and, knowing that their hope of retention or advancement in the service depends upon their efficiency in keeping as low as possible the ratio of cost to production, they will become the most aggressive fighters for accident prevention.

And the workman, while he has now, in the instinct of self-preservation, the strongest possible reason to protect himself against accident, will give far greater attention to the safety of the men about him when he finds out that carelessness brings down upon him the wrath of his foreman. To-day a man is fined or laid off or dismissed for the careless operation of valuable machinery; under workmen's compensation, he would be fined or laid off or dismissed for indifference to the safety of his fellow-workmen.

Thus, when all has been said that can be said for the importance of a wise and efficient and powerful factory inspection department, it must be admitted that the all-important thing in accident prevention is to let the economic necessity of reducing accidents enter effectively into the calculations of the "powers that be"—those who determine how often chains are to be inspected; how soon defective cars are to be retired; what signalling system is to be installed for those working in defenceless positions, whether cranes are to be stopped when repairs are made on the runway; what part of the work is to be done by ignorant foreigners; at what speed work is to be carried on; all those details of operation so intricately connected with

the management of each enterprise that they cannot be reached by law, but must depend upon the will of him who directs the enterprise. And it is to be hoped that our state legislatures will not overlook this: that in granting larger appropriations and new powers to the labor departments, they will not fail to secure the co-operation of employers in accident prevention, by the enactment of workmen's compensation laws.

THE NECESSITY FOR SAFETY DEVICES

By HON. J. C. DELANEY,
Chief Factory Inspector of Pennsylvania.

The Department of Factory Inspection, over which I have had the honor to preside, for the past eight years, has taken an advance position on the guarding of dangerous machinery, and other appliances equally dangerous. With this end in view, it has sought legislation that would meet the requirement, but has not obtained all that was sought. It has made a careful investigation of many serious accidents, learned their causes, and also delved into the opinions of the courts respecting accidents.

From time to time the views of this department, covering the subject of accidents, have been given to the public. These views cover a wide field, and I shall confine my remarks to a few features in the field of accidents. It has been estimated that more lives are lost and more serious wounds are inflicted each year in the United States, by machinery, than the total of killed and wounded in the battle of Gettysburg. In this estimate, accidents on railroads and steam boats are excluded. I believe the estimate is too low, rather than too high. But whether one or the other, we do know that the casualties from machinery are not creditable to an age so far advanced in philanthropy, the arts and sciences. All these killings and maimings are called accidents. But as an accident is something out of the range of ordinary forethought, the term accident is, I think, often misapplied.

These so-called accidents are the result of three causes, viz.: carelessness on the part of the injured; carelessness on the part of a fellow-employee; and carelessness on the part of the employer. The first two of these causes may be dismissed for the present as coming incidentally within the scope of this subject.

I wish to deal with the owner of the machine, with the person who puts in motion a dangerous mechanism, trusting to the skill and caution of his employee to ward off death or other injury. I find three classes of employers, as well as three main causes for accidents.

First, the employing class that is humane and intelligent.

Second, the class that is humane, but ignorant.

Third, the class that, whether enlightened or not, is wholly indifferent.

The employers in the first of these classes suffer from the weaknesses of the two latter classes, because, in the general clamor against accidents, the public draws no distinction.

In any effort to prevent accidents from machinery, the first class of employers needs little, if any aid or encouragement. Employers of that stamp are ever alert to obtain the newest and best safety appliances, and they know the useful from the useless. The second class of employers would not hesitate to carry out the humane act of installing safety appliances, but are restrained by the fact that they know but very little about the construction of the very machines that are amassing them fortunes. The third class of employers consider their employees as tools of trade, to be left to their own devices, and their own sense of caution. To all such, a dead man, more or less, does not count. A new employee can be had cheaper than a safety appliance.

I have made these distinctions because I wish to be just to all classes, and just to the public as well. And furthermore, it is necessary that such distinctions in classes of employers should be recognized before we can hope to prevent accidents from machinery, or to reduce the number to a minimum.

To prevent an accident is better than to suffer from it in pain or loss of money. But how prevent? In reply to this query, I would suggest that all parts of machinery, including shafting be equipped with oil cups that feed automatically, and that these cups be filled before the engine is started, and at such other time when the machinery is not in motion. Every year I get reports of employees killed, or maimed for life, in the act of oiling overhead shafting in motion. That all exposed cogs, gears and belting should be guarded, is too self-evident. But when cogs and gears are close to the floor, some employers imagine they are not dangerous, ordinarily they are not, but when an employee slips or stumbles upon the floor, the case is otherwise. We have had several shocking accidents from these supposedly harmless cogs and gears. That saws, planers, jointers and shapers can and should be guarded, requires no argument. As a rule, all such dangerous appliances

are guarded but, unfortunately, the guards are so adjusted as to be very inconvenient or annoying to the employee, hence he removes them to his own damage. There should be devices that shall be permanent, whilst at the same time not inconvenient for the operator. It too often happens that employees are caught in machinery or shafting and killed or mangled when, if a ready means had been at hand to stop the machinery, the injury would have been slight. To prevent such accidents, it is only necessary to place an engine check-stop near each machine or at least one in each room. By this means the motive power can be instantly shut off, no matter how far the engine-room may be from the place of the accident. These check-stops, where used have given most satisfactory results.

There should be legislation that will prevent the manufacture or the installation of machinery, and its appliances, that is not equipped with the most modern and best of safety guards. Such legislation is within the police power of the law-makers, and could not be set aside as unconstitutional. It would work a peaceful revolution in the right direction by training employees to the use of guarded machinery. It would greatly lessen the number of accidents, and would save employers from countless suits for damages. As a furtherance to this, the commonwealth should have machinery exhibits at his own expense, exhibits at which all employers could witness the perfection of human skill in the manufacture and application of safety devices.

It may not be amiss to speak of a hope that has lived with me for many years, a hope that if realized will be the means of saving many human lives and millions of dollars worth of property. I have, in mind, the many accidents on railroads, caused by "head end" collisions, "side swipings" of trains while running in opposite or parallel directions. How to prevent such accidents is not the hope I wish to express, but how to prevent the loss of life and property after such collisions. A few years ago a horrible accident occurred within a few miles of our capital city. A passenger train was "side swiped" by a loaded freight train causing the loss of several precious lives and the destruction of hundreds of thousands of dollars worth of property. I was one of the first to arrive on the awful scene, a scene which will ever live in my memory. The hundreds who, like myself, were drawn to that awful holocaust were powerless to succor the unfortunate beings who were pinned under

the mass of wreckage, and who were being roasted to death by the fire raging around them. At that moment I realized that a means for the saving of both life and property, and a very simple one at that, was at hand, provided railroad companies could be made to provide the same, namely, the equipping of every passenger car, every locomotive, and every caboose with a supply of fire extinguishers. I at once conveyed my thought to prominent railroad officials, all of whom thought the suggestion a splendid one and gave me assurance that it would receive prompt attention. After waiting a year, and seeing no result, I conveyed my thoughts to the highest national authorities and they, like my railroad friends, applauded and highly commended the suggestion, but I regret to say no steps have yet been taken to supply the simple preventive. I therefore make an appeal, through this organization, that the good men and women of this nation take up this humane suggestion and secure the simple and inexpensive device I have begged for, but have not received.

GOVERNMENT MEASURES TO INCREASE MINE SAFETY

BY J. A. HOLMES,
Director of United States Bureau of Mines.

What I want to do at this late hour is to call your attention to one or two things in connection with the work the government officials are doing to bring about greater safety in the mines. In the first place, they conduct investigations in an endeavor to discover the causes of mine accidents, and thereafter to suggest remedies or preventive measures. We are prevented ourselves by law from having anything to do with the inspection of mines or industrial plants in this country. We are forbidden by legislative enactment to talk much about it. State mine inspectors exist, to whom belong the prerogative and we are glad to surrender it to them. In connection with the disaster which occurred at Scranton, Pa., yesterday, I shall, as a matter of interest, illustrate what we endeavor to do. We all recognize that the prevention of mine disasters is more important than the rescue of the injured, and yet the rescue work is also essential.

There are two modern methods which we have endeavored to develop in connection with this rescue work. In mine disasters, whether caused by fire or by explosion, the mines rapidly fill with poisonous and explosive gas. In order to rescue men, it is necessary for others to enter the mine at once. They cannot do so, breathing the ordinary atmosphere; because it does not exist there. Our men must carry their own atmosphere with them, and we have endeavored to provide such equipment for them. Now, as the miner enters the mine he wears a helmet, and he carries with him his oxygen, contained in an iron bottle behind him, an oxygen supply lasting two hours, also a quantity of caustic potash, which will last for two hours, and these are the only two things which he needs to carry on the work. The oxygen, which is under great pressure, has the pressure relieved, passes through a tube, enters through the tube attached underneath the helmet and goes direct to the man's breathing outfit. When he breathes out, the air is impure, as it

contains carbon dioxide and moisture. This air goes down and passes in the rear and then goes up through the potash, and the effect is to take out of this impure air the carbonic acid gas and the surplus moisture, and the remaining oxygen, together with the nitrogen, continues to circulate through the system. The helmet wearer never breathes pure oxygen, but continues to breathe over again the original supply of nitrogen, and that lasts two hours.

A sad accident occurred to one of our rescuers, which we do not understand, but was probably due to leaking on the side of the helmet, which allowed the poisonous gases to enter. The helmet is lined on the inside with wire and rubber cushions, and this is designed to fit the irregularities of the face, and prevent the poisonous air from forcing its way through. It is quite possible in the excitement that the man forgot to tighten the helmet sufficiently. He was a man not long in training, but conscious of his duty, and his only hope of reward was a letter from the Government to his family.

Each member of a rescue party carries with him a safety lamp, which will detect the poisonous gases, a lamp which will not explode and which goes out when the gases become so rich as to make it impossible to burn without the ordinary supply of oxygen. He carries with him also a lamp which will answer the purpose whatever the nature of the gases. With these two lamps, and helmet equipment which he carries on his back he can carry any other implements needed in connection with rescue work.

He goes into the mine, and suppose he finds a man. The purpose then is to rescue the man. The only possibility of rescuing the man is to get oxygen into his lungs, and the poisonous gases out, and for that we have a rather remarkable machine an oxygen reviving apparatus which we regard as important as the helmet. The rescuer releases the pressure of the oxygen in this apparatus and turns the oxygen into the lungs of the miner. When the lungs have been filled and the machine is reversed, which is usually done automatically, it pumps the air out of the lungs and later pumps oxygen in, and so that machine, which moves as rapidly as thought, fills and empties, and does so in just about the right regularity in bringing about the breathing of the body. We have revived men so thoroughly overcome with poisonous gases, that they had no pulse or breathing, when the body is so warm as to make reviving possible.

With these two simple propositions the work so far goes on.

We have six crews of trained miners constantly going from one camp to another to train miners, and to encourage miners to carry on the work themselves. In the past two years, since this work was begun, more than 600 rescue outfits have been supplied to the proprietors of the mines; and I want to say that we find the mine owner in sympathy with this work, and that he does everything he finds possible to do as a mine owner. This is encouraging for the future. For three years preceding this, the death rate increased 33 per cent; during the three years following it has decreased 30 per cent. If we can keep up that decrease a few years we will have the United States as creditable in this respect as in the great industrial development of the country.

PART THREE

*Legal and Constitutional Questions
Involved in Employers' Liability
and Workmen's Compensation*



LAW AND SOCIAL PROGRESS.¹

BY SAMUEL McCUNE LINDSAY, PH.D., LL.D.

Professor of Social Legislation, Columbia University, New York City.

The great defect in our liability law is that it does not do the work for which it was intended. Indeed there are few topics on which a more unanimous public opinion exists than that there are defects in the present law of employers' liability. Judging the present employers' liability laws in the United States by their results in action, we could very much better describe them as "employers' immunity laws."

The question, fundamentally, that we have to deal with is one of fixing responsibility for proper social, industrial and working conditions. It is a difficult matter to define responsibility, whether the responsibility of the employer or of the employee, in so complicated a relationship as that which exists between employers and employees. The old English common law fixed that responsibility very definitely, very simply and very directly, and it worked well at the time that the common law liability rule was formulated. I suppose to-day there is no department of legislation and no field of legal activity in which we see the relationship between existing social conditions and abstract rules at such great disadvantage as we do in the present condition of those rules and those laws which, taken collectively, make up what we call our employers' liability law.

At times we may be tempted to look upon the law as an abstract rule of justice—lawyers usually, and many judges constantly, do that,—and there is a certain body of law which can be so interpreted, but that is not the body of law with which we are to deal at this meeting. We are to consider a body of law which tries to fix responsibility, defining the duties and rights of parties in a relationship—namely, that of employer and employee—which must be adjusted to current economic changes and conditions, and that is precisely what our present law does not do, and all students of the

¹Opening address as presiding officer, third session of the annual meeting of the Academy, April 8, 1911.

subject are in substantial agreement that it does not. When the Court of Appeals in New York handed down its opinion, a few days ago, in respect to the attempt of the Legislature of New York to formulate a new rule of action, the Court expressed itself as in full sympathy with the effort to revise and remodel our employers' liability law. It decided, it is true, in a very narrow spirit, and by what to my mind was entirely an unnecessary legal argument, and one which I believe other equally distinguished judges are not likely to follow, that the economic conditions and social philosophy of our own day have nothing to do with the constitutional guarantees of property under which employers and employees may contract to carry on their work in the state of New York. It is precisely the reverse of that proposition upon which the old common law rule of employers' liability was built up. The English courts formulated the law of liability upon a consideration of the economic conditions and social changes of their time, and it is very unfortunate indeed, if we must take the view of the New York Court of Appeals, that we must consider our conditions static and fixed for all time by the constitutional guarantees interpreted absolutely as abstract principles until they are formulated anew through constitutional amendment every time they come in conflict with the consensus of public opinion. However, the decision of the Court of Appeals for the State of New York is now the law for that state, and should the Supreme Court of the United States render a similar decision, that would be the law for the United States.

Such decisions place the responsibility back upon the people to formulate in ways that are open to them, the rules of law that they wish to enact, and wish to see enforced by the courts. In other words, it is not a hopeless situation. The courts are amenable to law and the people make the law, and it is precisely for that reason that, at a meeting like this, the Annual Meeting of the Academy, we are fulfilling a useful function and a timely one in devoting all of the sessions, practically, to a single topic, and facing squarely and in the spirit of free scientific discussion the great question of how our economic and social conditions may be better embodied in our law, and make our law accomplish the ends of justice under the economic and social conditions of our own day.

THE CONSTITUTIONAL PROBLEM OF WORKMEN'S COMPENSATION

BY WILLIAM DRAPER LEWIS, PH.D.,
Dean of the Law School, University of Pennsylvania, Philadelphia.

The Court of Appeals in New York has just rendered a decision declaring unconstitutional the Workmen's Compensation Act in that state, the ground of the decision being that the act deprives employers of their property without due process of law. The action of the highest court of the first state in the Union shows the serious nature of the constitutional problem involved in any attempt to meet present conditions by a compensation act, or in other words, by an act which throws in whole or in part on the owners of the business the financial loss resulting from all accidents to employees occurring in the course of the business and incident thereto.

The constitutional limitation that a person cannot be deprived of his life, liberty or property without due process of law, is not only in the Federal Constitution as a limitation on federal and state action, but in one form or another is found in practically all our state constitutions. On the other hand, the decision of one court on a particular act, even though, as in this case, the language of the court is sweeping enough to condemn all similar legislation, is very far from being conclusive of the question of constitutionality. If a decision on a new and important question of constitutional law is fundamentally sound, it lasts; if unsound, while it may not be formally overruled, it comes in time to be practically disregarded. Indeed, if this were not true, our written constitutions would rapidly become intolerable fetters upon the expression of the reasonable desires of the people. The famous decision of the New York Court of Appeals in 1885, that an act which prohibited the manufacture of tobacco in tenement houses was unconstitutional, because it had no relation to the promotion of public health, and, therefore, arbitrarily deprived the owners of such houses of a reasonable use of their property, would probably not now be followed by any court, except possibly the court which decided it, because to-day courts would recognize that the legislature* of New

York was right and the Court of Appeals wrong, not on a matter of law, but on a matter of fact,—the use of tenement houses for the manufacture of tobacco being, as a matter of fact, peculiarly deleterious to health. (The matter of Jacobs, 98 New York, 98.) In the Bake-Shop Case—a decision of the Supreme Court of the United States (*Lochner vs. New York*, 198 U. S. 45)—an act of the State of New York limiting the hours of the laborers in bakeries to sixty per week was declared unconstitutional as arbitrarily depriving the workmen of their right to contract. This case was supposed to threaten all legislation designed to limit the hours of labor, except peculiarly exhausting employments. But to-day, since the decision of the same court in the Oregon case (*Muller vs. Oregon*, 208 U. S. 412), the Bake-Shop Case is believed to stand merely for the proposition that legislation limiting the hours of labor must be shown to be reasonably designed to protect the health of the laborer.

There are grounds for believing that the constitutional prohibition against depriving persons of life, liberty or property without due process of law, as originally used in the fifth amendment of the Federal Constitution, limited merely arbitrary executive action, and perhaps legislation establishing arbitrary modes of legal procedure; but as used in the fourteenth amendment and in the state constitutions as a prohibition on state legislation it has been definitely decided to extend far beyond this, and to limit arbitrary legislation of any kind, whether affecting procedure or substantive right. In short, as a result of this provision in our constitutions, the system of law under which we live is practically this: The legislature has a wide discretion to change the law and enact new law; but the sphere of this discretion has limits; legislation that affects private rights and which shocks existing conceptions of what is fundamentally fair and right is not within the power of a legislature to enact; such legislation deprives persons of their liberty and property without due process of law, and the courts are, when a case is presented to them, the sole and only judges of what is or is not contrary to "fundamental conceptions of fairness and right." This system is peculiar to the United States. There is much to be said for and much to be said against it. I do not wish to discuss that broad question. For us, it is only presently important to recognize clearly that as a result of the system the task of the lawyer called

upon to defend any novel legislation is to convince the court that the legislature has not so far exceeded an admittedly wide discretion, as to produce an arbitrary interference with current fundamental conceptions of right. It follows, therefore, that the task of supporting such a sweeping innovation of the law as a workmen's compensation act becomes impossible, unless the lawyers in charge of the defense of the legislation can show that the act is consistent throughout with a theory which is not, as a theory, necessarily revolting to men accustomed to mix, as our judges are to some extent, with all classes, but more especially with the educated well-to-do.

The result of the recent litigation in New York shows the difficulty of supporting a workmen's compensation act unless those especially interested have, in their own minds, carefully worked out a theory justifying the legislation. The principal innovation in the law created by any such act is that it imposes liability on the employer where he is without fault, and where he exercises every possible degree of care. When such legislation is proposed or defended, those who advocate it must be prepared to answer the objection, that the legislation is merely a scheme for arbitrarily transferring money from the pockets of the most convenient rich man—the employer—to the pockets of the injured employee; and that it is therefore grossly arbitrary, unfair and unconstitutional. It was, I think, most unfortunate that the New York act was limited to workmen engaged in dangerous employments, because this limitation suggested a reply to the objection just stated that is wholly inadequate. It was argued that the act was merely an ordinary exercise of the police power over dangerous occupations; the argument being, that if an occupation was dangerous, under the police power it could be stopped entirely, and therefore, any regulation, however arbitrary, was within the power of the legislation to enact. The premise on which this argument is based is more than doubtful. For instance, the act was made to apply to work on scaffolds more than twenty feet from the ground; yet an act which prohibited the erection of such scaffolds would without doubt be held to be unconstitutional as an arbitrary limitation on the use of property. Again, if the act was designed to lessen accidents or improve the conditions under which dangerous work could be carried on, why was the employer made liable for all accidents occurring in the

course of the business, whether due to its dangerous character or not? Lastly, if the dangerous character of the employment and the reduction of accident is the justification for the legislation, what is the justification for making the employer liable when he is doing everything anyone could do to make the conditions safe, and the workman himself is negligent?

The report of the Wainwright Commission which drafted the New York act, while containing much valuable information, and an excellent indictment of the present system, cannot be said to contain a complete justification for the particular remedy embodied in the act. After reciting the evils of the present system, the commission in its report to the legislature, states that the evils of the present system can be "best avoided by compelling the employer to share the accident burden in intrinsically dangerous trades, since by fixing the price of his product, the shock of the accident may be borne by the community." By the community is here evidently meant the consumers of the product. But, while the ability of the owners of the business to transfer the share of the burden of industrial accidents placed upon them on the consumer is indicated, there is no explanation of why the burden should be ultimately borne by the consumer of a product, and therefore no adequate reason for selecting the employer, even though he is the only medium for distributing the shock.

Is there then any adequate answer to the objection that the New York act and all similar legislation are grossly arbitrary and therefore unconstitutional?

In order to answer this question it is first necessary to understand exactly what a workmen's compensation act does. It provides that one of the costs of the business, the loss resulting from injury to employees, should hereafter, to a certain extent, be borne by the owner and controller of the business. The law is not a police regulation of dangerous occupations. It is a law regulating business association contracts between employer and employee. A law which merely said that anyone who employed another in his business, should, unless he stipulated to the contrary, be presumed to have contracted to pay that other for all injuries resulting from the operation of the business, would be constitutional; but the ability to "contract out" would make it largely useless. The real question then in a workmen's compensation act is this: What is the justi-

fication for saying to an employer and employee, if you contract you must contract on the basis of the employer being liable in whole or in part (as the act may designate), for injuries occurring to the employee in the prosecution of the business? Any act, dealing with a class of transactions which merely changes the presumptions of fact in regard to obligations assumed, where the obligation is not touched on by express contract, is constitutional; but any act which goes further and interferes with the complete freedom of contract must have a reasonable theory to justify the interference, or the courts will say, and rightly, that it interferes with the fundamental right to freedom of contract of the persons affected. The problem of finding this reason is not a legal problem but an economic one. The judges are not economists. It is not for them to invent economic reasons to justify legislation.

The economic justification of a workmen's compensation act will be found on investigation to be the same as the economic justification for laws against monopoly. Laws against monopoly interfere with the freedom of contract, where that freedom is exercised to produce monopoly; yet their constitutionality has always been sustained. We have come to recognize that the monopoly by one set of men of any product or service is a bad thing for the community. When a monopoly exists, the producers, that is the persons who have the monopoly, have the practical power to exact from the consumers more than a reasonable cost of production and a fair return on the investment. *The holder of a monopoly is able to get part of the product of the labor of somebody else for nothing.* The reason why laws against monopoly, though they invariably interfere with the freedom of contract, have never been declared unconstitutional, is the general recognition of the fundamental economic law, that it is disastrous to the state to have the consumers of a particular product pay more than the cost of production and a fair profit, and that contracts tending to produce this result can be prohibited.

In this justification for statutes interfering with the freedom of the contract where the contract produces monopoly, we have, I believe, as stated, the justification for a workmen's compensation act. The accidents which occur from time to time to the machinery used in business, have long been regarded as one of the elements which enter into the cost of production. We have only recently awak-

ened to the fact that another cost of production, is the loss of earning power entailed by accidents to persons engaged in the business, due to the operation of the business. This cost at present is borne largely by the workmen. It is not a part of the employer's cost, except in the case of his negligence. It is, therefore, not part of the cost of production, which is transferred in the price of the finished article to the consumer. The injustice of the present system is not that the employer does not pay for the result of injuries to his workmen. Competition among employers cuts down the employer's profit to a business return on his investment. The injustice lies in the fact that the consumer of the finished product, or the user of the service which the business supplies, is not paying for all the elements which make up the cost of that which he is getting. The consumer is here in a position analogous to the position of the monopolist. He is reaping an unfair advantage. He is getting some part of the product of another's labor without paying the full cost. If it is sound that the consumer of any article should not bear more than the cost of production and a profit, it is equally sound that to have the consumer pay only a part of the cost of the finished product, the rest of the cost being borne by one or all of the classes who have joined in its production, is an equally bad condition. Whether we should throw the burden of an accident in a particular business on the business in which it occurs, or distribute the burden by an insurance system supported by all those engaged in a similar business, is a matter of detail, provided we recognize the fact that any industrial system which does not, in effect, throw every element of cost on the consumer of the finished product, is a system that is as radically defective as one which, in effect, by permitting monopoly of production to exist, throws on the consumer more than the cost of production. Monopoly raises a class above its deserts, taking a little from each of the many to support the few. Our present system of dealing with industrial accidents is a system by which the many take from the dependent classes more than they give in return. Monopoly inflates those already economically strong; our present industrial accident law and its administration depresses those already economically weak. The fundamental vice is the same in both—an unfair price paid by the consumer; unfair because too high, or unfair because too low.

Having thus justified, from an economic point of view, placing

the burden of industrial accidents on the consumer, it merely remains to refer again to the obvious fact pointed out by the Wainwright Commission in its report, that the owner and controller of the business is the only medium through which the burden of the cost of these accidents can be placed on the consumer. The owner of the business owns the completed product and all elements of cost to him he may transfer to the consumer in the price of the product.

The justification for saying to an employer and employee, if you contract you must contract on the basis of the employers assuming the burden of industrial accident, is thus seen to be, as stated, economically the same as the justification of legislation which prohibits a contract creating a monopoly. There is, however, this difference between a contract of an employer and employee, in which the employer does not assume the financial burden of accidents incident to the operation of his business, and a contract creating a monopoly. The latter contract creates a condition which renders the oppressed parties, the consumers, helpless. They must have the article, and to have it they must pay an exorbitant price. The oppressed party, where the contract is between the employer and employee, is the employee—one of the parties to the contract. To uphold the constitutionality of any legislation which prohibits the employer making a certain contract with his employee, on the ground that the result of the contract is an unfair oppression of the employee from an economic point of view, it must not only be shown that economically the contract is unfair, but it should also be shown that the employees are so dependent that they are not in a position to refuse to enter into the contract. That a contract is unfair to one party from an economic and social standpoint, is probably not sufficient to enable the legislature to interfere; where the unfairness is to one of the parties to the contract and not to third persons. As indicated, in such a case it must also be shown that the parties on whom it bears unfairly, are in a position where they practically have to accept the unfair contract. As an illustration: The payments of miners' wages in store orders is regarded by many persons as a condition tending to depress the miner and therefore economically unfair to him. A law prohibiting such a contract was, in 1886, declared unconstitutional by the Supreme Court of Pennsylvania, as an undue interference with the freedom of contract (Godcharles

vs. Wigeman, 113 Pa. 431); the laborer being regarded by the court as able to take care of himself. An opposite conclusion was reached by the Supreme Court of the United States in the case of the Knoxville Iron Company *vs.* Harbison (183 U. S. 13), a case decided in 1901. Though the language of the two courts indicates, apparently, a wide divergence in attitude towards such legislation, fundamentally the difference would appear to be in the apprehension of what were the true facts, rather than a difference in the principle; the Supreme Court realized what the court of Pennsylvania as then constituted failed to realize, that the laborers were not economically strong enough to insist on payment in money. If, therefore, workmen engaged in manual labor are not, as a matter of fact, usually strong enough—and I think this can be shown—to refuse work unless the employer assumes the risk of accidents in the business, and it is fundamentally fair for the reasons given that the employer should assume this risk, then a workmen's compensation act with a clause against contracting out, applicable to the more dependent classes of workmen, that is to those engaged in manual pursuits, is constitutional. It is constitutional, even though it interferes with the freedom of contract for the same fundamental reason that laws prohibiting monopolies are constitutional, though they also interfere with the same freedom.

In this paper I have tried to show that the constitutional problem in a workmen's compensation act is the problem of showing that such an act is not fundamentally unfair to the employer, according to current conceptions of fundamental right, and that, therefore, the first thing to do is to find out whether there is a correct economic basis for the legislation. If this basis cannot be found, then the legislation will be, and should be, declared unconstitutional. I have also tried to point out what I believe to be the economic reason which justifies such legislation. But in spite of confidence in the correctness of the economic position taken, I would not be fair to myself if I left you with the impression that the proof of the reasonableness of the legislation from an economic point of view removed all difficulty. It usually does in such cases where the court is convinced of the facts on which the economic argument is based, and on the soundness of the argument. But in the path of a workmen's compensation act, where liability is imposed on the owner of the particular business in which the

accident occurred, another objection is to be met and overcome. There is more or less prevalent among the members of the legal profession, and therefore, of course among our judges, an idea that the common law never imposes liability without fault; and that consequently, any legislation which imposes liability where there is no fault, is arbitrary, unfair, and therefore unconstitutional. The decision of the Court of Appeals of New York was as a whole based on this thesis. Of course, the conclusion does not, of necessity, follow the premise. But it is not unnatural that the conclusion should follow in the mind of one who believes in the premise, and is imbued with a just admiration of the principles of the common law. Personally, with respect to those who have an opposite opinion, I do not believe that merely because a principle has not been recognized by the common law, it is necessarily to be regarded as opposed to fundamental ideas of right. And furthermore, I believe it can be shown that the law as developed by our courts without the aid of statutory enactments has recognized the principle that liability may be imposed without fault. These, however, are large legal questions worthy of separate treatment.

PRESENT STATUS OF WORKMEN'S COMPENSATION LAWS

BY WALTER GEORGE SMITH,
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In a recent address before the Pennsylvania Council of the National Civic Federation, John Mitchell summarized in a striking manner the statistics of death and injury to workmen in industrial employments in the United States. He said:

"It is safe to say that the greatest calamity that can befall the family of the wage-earner is to have the father and bread-winner carried lifeless into his home, and the shock of this calamity comes with added force when the death is due to an industrial accident. And yet we are informed on the very best of authority that this tragedy is enacted in the United States more than 100 times each day, more than 35,000 times each year."

And he adds:

"It is not at all to the credit of our country that so many of our wage-earners suffer death and injury in the peaceful conduct of our industries, when in other countries we find that the number and proportion of the killed and injured is almost three times less than in our own. William Hurd, the well-known writer, makes the statement that 536,165 working men are killed or injured every year in American industries, and Dr. Hoffman, statistician of the Prudential Life Insurance Company, has estimated the annual number of industrial accidents at approximately 2,000,000. Of these 35,000 were killed and the others were injured. In the Pennsylvania coal mines alone 1,073 men were killed last year and 2,160 were seriously injured."

For years the American people have borne this evil, if not with equanimity, at least with patience, in the belief that it was a necessary incident in modern progress, and the lives that were taken and the injuries that were inflicted were inseparable from the conditions of modern life. Meantime, however, European peoples have been studying the subject, and as early as 1883 the

German Empire solved for itself the problem of insuring workmen against industrial accidents and had provided also for disability arising from sickness, old age and invalidity. An accident law was passed July 6th, 1884, including generally the industries utilizing mechanical power. Agriculture and forestry were added later, and still later building operations and marine transportation, in 1887. Invalidity and old age insurance laws were enacted in 1889.

The characteristic feature of the German system is compulsory mutual insurance, an insurance carried by mutual associations of employers in the same or allied industries and without contributions by the employees.

"Each employer contributes to the cost according to the size of his establishment, that is, the amount of his pay roll and the risk in his particular branch of the industry. In some cases individual establishments where many accidents occur are charged an extra premium."¹

It would be very interesting to trace in detail the origin and development of the German system, but this has been well done in other papers, and it is only necessary for the present purpose to refer to it as showing how an effective system can be devised and put into practice where constitutional difficulties do not interfere.

"Surveying the political setting of the German insurance system," says Carman F. Randolph, "we find what at the moment is perhaps the fairest field in the world for the working out of a vast and complicated scheme for relieving misfortunes by a plan, neither so niggardly as to be delusive, nor so bountiful as to be demoralizing. Here is a people enjoying in a large measure the steady influence of tradition and custom, yet alive with a youthful enterprise which has brought a sudden and a great prosperity."

"In short, the German insurance system flourishes in a peculiarly fit environment—a well-disciplined, or, as we should say, an overgoverned community."²

In England every employer must provide compensation for injury to his workmen for any accident arising out of or in course of the employment, unless the accident was due to serious or wilful

¹Report of Massachusetts Commission.

²Brief on the Legal Aspects of Systematic Compensation for Industrial Accidents, Carman F. Randolph, New York, 1911.

misconduct of the workmen, and even then in the case of death the employer must pay. Compensation is also provided when death or disability results from certain industrial diseases. This has been the law since July 1, 1907. The burden is borne directly by the individual employer, as no method of insurance is provided for or required by law.

In Norway employers in certain lines of industry are compelled to provide accident insurance for their employees. Insurance must be taken from a central insurance office of the state, the expenses of which are met by general taxes, and premiums are charged in accordance with the risk in each line of industry.

The Massachusetts Commission reports:

That nearly thirty countries and self-governing colonies have largely done away with the old laws of liability based upon the fault or negligence of the employer, which were not essentially different from those now in operation throughout the United States. Under one form or another these countries have adopted new methods providing for the victims of industrial accidents by means of fixed scales of compensation largely irrespective of negligence. These new laws are not intended to be punitive in any sense, but are founded on the principle that the whole community for which production is carried on should bear the burden of all the costs of production; in other words, that the cost of an industry in life and limb should first be met by the employer or by some system of insurance, and then charged against society as consumers of the product, in the same way as the depreciation of machinery and other costs of production are provided for. No two countries have precisely the same method of distributing this burden or of providing for the victims; but all the different plans are modifications or combinations of three distinct systems, which are typified by the compensation act of Great Britain, the compulsory mutual insurance system of Germany and the compulsory state insurance of Norway.*

It would seem, therefore, that almost all civilized countries have, to some extent at least, made provision whereby the community bears a part of the industrial loss resulting from the casualties among workmen in the scope of their employment. This has been by applying the principle of insurance or mutuality so as "to reduce the individual catastrophes that destroy into a dust cloud of accidents that distributes itself."*

The sentiment in favor of providing for workmen's compensation and kindred legislation has been traced by Professor Dicey

*Report of Massachusetts Commission.

*Frederic Passy, quoted by Randolph, p. 31.

to that principle of collectivism which, following the era of Benthamism, owes to it a maxim that has been one of its strongest aids, namely, the idea of "the greatest good to the greatest number."⁵ Thus he says:

"A line of acts begun under the influence of Benthamite ideas has often, under an almost unconscious change in legislative opinion, at last taken a turn in the direction of socialism. A salient example of this phenomenon is exhibited by the effort lasting over many years to amend the law with regard to an employer's liability for damage done to his workmen in the course of their employment. Up to 1896, reformers, acting under the inspiration of Benthamite ideas, directed their efforts wholly towards giving workmen the same right to compensation by their employer for damage inflicted through the negligence of one of his workmen as is possessed by a stranger. This endeavor was never completely successful; but in 1897 it led up to and ended in the thoroughly collectivist legislation embodied in the Employers' Liability Acts, 1897 to 1900, which (to put the matter broadly) makes an employer the insurer of his workmen against any damage incurred in the course of their employment."⁶

It has been a subject of reproach on the part of some impulsive leaders of public thought that the United States has been so slow in showing in its legislation the effect of this collectivist sentiment, but the explanation is not difficult. In all European countries constitutional restrictions are far slighter than in our own. In England, there being no written constitution, the power of Parliament to legislate in any given direction as the pressure of public sentiment is brought to bear upon it, is practically without limit. In Germany and in Norway, to take the typical examples of European systems already referred to, conditions social and political are vastly different from those in the United States.

Although each of the states is a separate entity and has the power within certain limits to pass workmen's compensation laws, the limits are narrow by reason of the written constitutions, and if their limitations are heeded and legislation is perfected that will be sustained by the courts, there will remain the business question whether the industries of the state will be so burdened as to

⁵Law and Opinion in England, p. 309.

⁶Law and Opinion in England, p. 69.

make them unable to bear the competition of the industries of other states where less onerous laws are enforced. Here as in so many other instances our form of federal government presents difficulties for the law and social reformer for which he can find no precedent elsewhere. Yet, of course, political constitutions are made for men, not men for constitutions, and if the changing conditions of modern civilization make it necessary they will be interpreted or amended so as to meet those conditions.

Both the humanitarian sentiment which, whatever else may be said to the discredit of our generation, is one of its crowning glories, and the demands of business expedience require that some way should be devised whereby, applying the principle of insurance, the heavy loss from industrial accidents may be, to use the fine expression of the French philosopher, "scattered into dust clouds."

The present system, under which employers are liable under certain conditions for accidents to workmen, have led them to insure their risks, and there are many employers' liability companies in the United States. Mr. Mitchell, in the address from which quotation has been heretofore made, states that during the eleven years from 1894 to 1905, these companies were paid \$99,595,076 in premiums, and that forty-three per cent, or \$43,599,498 of this amount was paid in settlement of the claims of injured workmen. How much of this vast payment after the deduction of counsel fees and court costs finally came into the hands of the workmen is only a matter of estimate, but it would appear that less than one-third, or \$30,000,000 out of \$100,000,000 in round numbers was finally received by the workmen. Obviously, there is an enormous waste and it should be saved if it be possible to save it.

The temper of many thinkers towards the limitations imposed by the existing common law rules relating to industrial accidents is well expressed by the Supreme Court of Kansas:

The common law doctrine of reasonable care, assumption of risks, contributory negligence, and co-service took their rise at a time when shoes were made at the bench, the weaver had an apprentice or two, and the blacksmith a helper. Steam and electricity have revolutionized manufacturing conditions so marvelously that no vestige of former conditions remains. But while the factory worker's environment has completely changed, his common law rights and remedies have remained unchanged. It has been well understood for a long time that there is no justice or economic excuse for this state of affairs. The liberty of capital to conduct its business in its own

way does not include the right to inflict cruelties which have invariably characterized industrial progress. The liberty of the wage earner to contract for extra pay for extra hazard and to seek some other employment if he does not like his master's methods is a myth, or as has been said, "a heartless mockery." (*Kilpatrick vs. Grand Trunk R. R. Co.*, 74 Vt. 288 xxx.) The man and the machine at which he works should be recognized as substantially one piece of mechanism, and mishaps to either ought to be repaired, and charged to the cost of maintenance.⁷

Various acts have been passed by the legislatures of different states modifying the severity of the common law rule that no damages were payable when the accident was caused by the fault of the injured workman or of a fellow servant, or from the unavoidable risks of the employment.

"The practical effect of these laws," says Mr. P. T. Sherman, "has been to increase the uncertainty as to liability, litigation and the expense to employers but to waste in litigation the money paid by the employers without any material increase in the relief to the injured and to leave that relief just as slow and uncertain as before. In theory these laws are wrong, because they make the employer liable in damages for a wrong where he has been guilty of no wrong, and thereby they serve to stir up a sense of mutual wrong between employers and employees."⁸

Various efforts are being made to meet the admitted evils of the common law on the subject of employers' liability and its effect upon workmen in all departments of labor, and to discover the proper rules to adopt in reaching a just standard of compensation for accident and death within constitutional limitations. Plans are now under consideration in many states and statutes have been passed by Congress and by some of the states. The first federal legislation on the subject of employers' liability was restricted to common carriers engaged in interstate commerce, and recently two liability bills, one restricted to the Isthmian Canal and one applying to all laborers of the United States Government were introduced by the Congress. The decision of the Supreme Court of Connecticut that the Federal Liability Law of April 22, 1908, is unconstitutional, because it involves the administration of the law in state courts and affects matters beyond the scope of interstate

⁷Caspar *vs.* Lewin, 109 Pac. Rep. 657, U. S. Bulletin of Labor (1910) p. 846.

⁸Address before National Civic Federation, January 13th, 1911.

commerce, is now pending on appeal in the Supreme Court of the United States. Other constitutional objections have been raised in other jurisdictions and are also pending on appeal.

In Montana a law is in operation providing a co-operative insurance fund for miners and mine laborers, payments to be made by the employers, computed on the basis of tonnage mined and shipped, held for shipment or sold locally, and by the employees on the basis of gross monthly earnings. Insurance is compulsory, the funds being administered by state officers. Death benefits are limited to \$3,000; the right to sue is not taken away, but bringing suit forfeits all rights under the insurance, and on the other hand acceptance of insurance benefits is a waiver of the right to sue.⁹

While statutes providing for compensation have been enacted in the Philippine Islands and by Congress for certain special employments, the subject may be considered as practically an open one in the United States, and has been or is being considered by commissions under an act of Congress, as well as by state commissions in Massachusetts, New York, Illinois, Connecticut, Wisconsin, New Jersey, Ohio, Minnesota, Montana, West Virginia and Washington. In only one state (New York) has a comprehensive statute on the subject been enacted. This has just been decided to be unconstitutional by the Court of Appeals.

There is a general unanimity of opinion as to the object to be attained but a great divergence of views as to the best method of attaining them. In the report to the House of Representatives of the bill for the appointment of a commission a summary of the reasons for changing the existing system is given as follows:

One of the most pressing problems of interstate commerce that to-day demands the attention of Congress is that of wisely and equitably adjusting the loss to workmen of life and earning power which is the certain and inevitable consequence of modern methods of transportation.

The existing system, based upon the common law, circumscribed by the rigorous limitations placed upon it by judicial decisions, is entirely inadequate and had its origin in conditions of employment and methods of operation long since outgrown and abandoned.

The basis of that system, briefly stated, is to place a legal liability upon the employer to the workman for the loss of life or for disabling injury wholly upon the ground of negligence of the employer, and to put upon the person injured the burden of establishing that negligence by competent legal proof.

⁹See article by L. D. Clark, *Bulletin of Bureau of Labor*, Washington, 1910.

Judicial decision has specially limited the common law of negligence when it is applied to employees by the fellow servant doctrine and the assumed risk doctrine. Under these doctrines accidents caused by fellow servants, though necessarily numerous under modern conditions, are uncompensated; and accidents caused by dangers inherent in the occupation itself are likewise uncompensated, although such dangers steadily increase as the industry develops.

The general principle of liability is seriously and sometimes fatally restricted by the superadded limitation of contributory negligence.

Finally, as the burden of legal proof rests on the injured, even where the decisions entitle him to a "right of recovery," he is unable to "secure his proofs," and so frequently redress is lost.

Employees to-day bear both the physical and financial loss in a large percentage of accidents, with disastrous effect upon their families. Employers, though endeavoring to conduct their business with care, are harassed by a constant succession of suits for negligence, being subjected to great waste of energy and money in defending them, and being mulcted with large verdicts when they have no real moral blame.¹⁰

In the opinion of competent authority the effort to secure the passage of a workmen's compensation act by the federal government, excepting so far as it would relate to territory within its exclusive jurisdiction, is doomed to failure. A workmen's compensation system "should involve a single authority over employers and employees and a single classification of accidents and of compensation rates," and "if, after all, Congress should succeed in confusing the situation to the extent of its power, the great bulk of accidents will still remain within the exclusive jurisdiction of the several states."¹¹

The predominant thought of those who are seeking to provide a compulsory system of compensation is that the state has the right to regulate and provide conditions for the carrying on of dangerous industries. This was the view of the New York Commission, and since the right to regulate such industries is inherent in the state, it would follow that they might be compelled to submit to a system of compulsory insurance or other method of compensating an injured workman. It is insisted, however, that this theory is too broad, excepting insofar as it affects the power of incorporation; but even here it is not probable it can be carried to the point desired by those who seek to make the employer fully liable while he has not been guilty of negligence. It is agreed, and indeed it

¹⁰U. S. Bulletin Bureau of Labor, 1910, p. 681.

¹¹Randolph's Brief, pp. 84, 85.

has been settled by judicial authority, that the right to carry on any business or trade does not include such as are assumed to affect public policy as expressed in statutes regulating or prohibiting traffic in liquor, lotteries or kindred subjects, but the mere fact that an employment is dangerous is not of itself any reason why its exercise should be forbidden or the conditions so changed as to differentiate the employers' liability.

The New York Compensation Act went into effect September 1, 1910. It applied to certain dangerous employments which were enumerated and gave a scale of compensation for injuries and for death. It did not repeal the common law or disturb the rights of the employee or the employer under the existing law of the state, but gave to the employee the right of election to bring suit under any existing law or to claim compensation under the act itself.

In order perhaps to make more attractive the provisions of the compensation act, New York also passed an employers' liability law, making the employer responsible for defects in his plant and for the negligence of any person in his service entrusted with superintendence or authority to direct the employees, and likewise for injuries sustained by the employees of an independent contractor or sub-contractor. The employer under this law is made liable for injury to the workman caused in whole or in part by:

"(a.) A necessary risk or danger of the employment or one inherent in the nature thereof, or

"(b.) Failure of the employer of such workman or any of his or its officers, agents or employees to exercise due care or to comply with any law affecting such employment provided that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the serious and wilful misconduct of the workman."

Mr. Sherman pointed out the great constitutional difficulty to lie in the question whether or not compensation may be restricted to the more dangerous industries. "Due process of law requires," as he says, "that the employer shall be made liable only according to some reasonable principle of private justice, or—under the police power—pursuant to some reasonable public necessity."

The majority of the committee of the National Civic Federation for which he spoke, thought that there was no question as regards hazardous enterprises as to due process of law; that

under our constitutions the power remains in the state to regulate the relation of master and servant, but the danger was anticipated that a law limited in its application to the more hazardous industries would constitute an unreasonable discrimination between persons or classes; and it has been so held.¹² The weight of opinion seems to be, however, that incidental and unavoidable discriminations resulting from a reasonable classification by industries do not constitute unreasonable discriminations.¹³

As regards the argument that the state's authority to regulate the relations of master and servant gives complete control of the subject of compensating workmen, it has been acutely remarked that this would tend to assimilate the commercial relation to the family bond. It certainly would seem a strained construction of the law governing master and servant, which undoubtedly is within the constitutional powers of the state, to make it apply to the compulsory payment of compensation for accidents.¹⁴

No scheme for workmen's compensation would seem possible unless it contains some just and reasonable measure for insuring the risk, for it is obvious that an accident which in a large establishment with a heavy capital might readily be borne by the employer, would prove ruinous to the small manufacturer. It is of importance therefore to decide what plan of insurance for distributing the risk may be adopted. It has been well shown that any scheme of compulsory association of manufacturers such as existed in Germany, with enforced contribution to a common insurance fund, is unconstitutional, and as insurance companies are private commercial agencies, the legislature cannot prescribe insurance in them nor contributions to a mutual insurance fund, because this would "impose upon independent employers unconstitutional responsibilities in respect of each other's misfortunes and delinquencies as these affect each other's servants."¹⁵

The objections that have been touched upon in the references made in the foregoing pages are only part of those that may be found treated at length in various able papers and briefs upon this subject. The conclusion reached by Mr. Randolph is that work-

¹²Ives *vs.* South Buffalo Crosstown Railway Co.

¹³Sherman's address to Civic Federation, Chicago *vs.* Westby, 178 Fed. Rep. 619; L. & N. R. R. *vs.* Melton, 218 U. S., 36.

¹⁴Randolph's Brief, p. 93 *et seq.*

¹⁵Randolph's Brief, p. 109.

men's compensation cannot be made exclusively a remedy, but that in many, if not all, of the states "the slow and costly process of suits at law" will be injected into a scheme "where a speedy and cheap procedure is of prime importance." He emphasizes an additional obstacle to the success of any scheme, and that is "a widespread uncertainty and disbelief as to the validity of its very basis—masters' responsibility for injury regardless of fault,"—and insists that "a master's responsibility can no more be made to depend on the nature of his industry than on the size of his bank account. Whether the employment be safe, hazardous or extra hazardous, injury to the servant is the vital fact—the inevitable point of departure for all legal reasoning. In short, if the principle of compulsory compensation is constitutional it must, potentially, be applicable for the benefit of any servant and imposable upon any master."¹⁶

After expressing the opinion "that an American legislature cannot lawfully require a master to pay a fixed compensation to a servant injured in his employ without regard to the cause of injury," Mr. Randolph further holds that a large measure of systematic compensation may be attained by voluntary methods, and adds that there should be uniformity among the states, of which at present there is no sign.

This discouraging attitude was not held by the committee of the National Civic Federation, who drafted a tentative workmen's compensation bill for uniform state legislation, which is meant to apply to certain enumerated hazardous employments, and provides that no employer shall be liable for any injury for which compensation is recoverable under this act. It applies only to workmen earning less than \$1,800 a year, and provides for a graduated compensation for accident and the payment of a lump sum never to exceed \$3,000, equal to four years' wages, in case of death. Settlements are permitted by private agreement, but if not so settled an arbitrator is chosen. It expressly reserves the workman's rights to a trial by action at law and before the court without a jury unless either party shall apply to the court for a trial by jury. It provides that the judgment may be either for a lump sum or for periodical payments and gives the right of action to the legal representatives of a deceased workman.

¹⁶Randolph's Brief, p. 142.

Alternative schemes of settlement are permitted "provided that the scales of compensation are not less favorable to the workmen and their dependents than the corresponding scales contained in this act."

This proposed act, in the opinion of its framers, is an advance upon the New York compulsory compensation law just declared unconstitutional, by giving the workmen additional rights as follows:

1. The bill applies to many more industries than the few dangerous industries under the existing statute.

2. It gives compensation for practically all accidents, while the existing statute gives compensation only for accidents which can be proved to be due to the negligence of the employer or his agent, or to trade risks. The few exceptions under the proposed act, where they exist, must be proved by the employer.

3. The bill limits the option of the injured workman to sue for full damages to cases where the employer is personally at fault and in such cases would revive the full common law conditions and defenses. The existing statute gives the workman a complete option to sue for full damages under existing negligence laws or to take compensation.

4. The bill gives the workman the right to judgment for his agreed compensation under proper conditions. The existing statute provides no means for securing the workman the compensation he has elected and agreed to take.

This bill is submitted by the committee of the National Civic Federation through its chairman, Mr. Sherman, only as a tentative sketch plan and it undoubtedly contains features of great value. At the time of its submission, the decision of the Court of Appeals in the Ives case had not yet been rendered. Bills have been introduced during the winter in the legislatures of West Virginia, of Indiana, and perhaps of other states, complete in themselves, but as they have failed of passage will not now be considered, though each bill is of course a distinct contribution towards the elucidation of the subject. In New Jersey, however, a bill known as the Edge bill has become the law, introducing the principle of contract, either expressed or implied, between the employer and employee for acceptance of the provisions of the act. This agreement is construed to be a surrender by the parties of their rights to any other method of determining the amount of compensation or the

right to compensation. It provides that every contract of hire made subsequent to the time provided for in the act shall be presumed to have been made with reference to these provisions, and unless there be an expressed statement in writing that these provisions are not intended to apply, it shall be presumed that the parties have accepted them and have agreed to be bound thereby. The right to compensation is not defeated by the negligence of a fellow-employee or the assumption of risks inherent in the employment or from failure of the employer to provide safe premises and suitable appliances. A full schedule of compensation is provided for, and jurisdiction for the enforcement of the act is given to a judge of the court of common pleas.

A conference was held at Chicago during November, 1910, of Commissions of the United States, Illinois, Massachusetts, Minnesota, Montana, New Jersey, New York, Ohio, Washington, Wisconsin, Connecticut, the United States Bureau of Labor and the Special Committee of the Conference of Commissioners on Uniform State Laws, to consider subjects involved in a just compensation law. The conclusions of the conference have been summarized as follows:

1. An ideal act should cover all employments.
2. Injuries should be covered (a) irrespective of employers' negligence; (b) irrespective of employees' negligence, except where injury is self-inflicted.

The other questions relating to compensation, as to whether it should be paid in lump sums or installments, the amount and duration of compensation, the distribution among dependents were also discussed and substantial unanimity reached, excepting on the subject of constitutionality. A significant conclusion was that no contribution should be exacted from employees to any compensation fund.¹⁷

At the request of the National Civic Federation, and in view of the obvious necessity for uniformity of legislation among the states upon the subject, the Conference of Commissioners on Uniform State Laws has appointed a committee whose tentative draft of a statute is not yet ready for public discussion.

The American Federation of Labor has prepared four bills embodying compensation provisions applying to employment

¹⁷Bulletin of Labor, p. 715.

generally, to employees of the Federal Government, to dangerous employments in jurisdictions subject to Federal control, and to persons engaged in interstate and foreign commerce.¹⁸

The recent decision of the Court of Appeals of New York, to which reference has already been made, will have an important bearing upon any statutes hereafter drawn. It puts the judicial approval upon the objections brought against any compensation scheme where the employer is made liable for accidents or injuries to his workmen in extra-hazardous occupations where the injury was not due to negligence or lack of precaution on the part of the employer. The New York statute provided that if the injury was caused wholly or in part through a necessary risk of the employment, or one inherent in the nature thereof, or through the employer's failure to exercise due care or to comply with any law affecting such employment, the employer should be liable to compensate the injured workman according to the scale fixed in the law.

The court decides the act to be unconstitutional because it seeks to hold a man liable for damages to another which have been incurred without his fault or negligence.

When our constitutions were adopted, says the court, it was the law of the land that no man who was without fault or negligence could be held liable in damages for injuries sustained by another. That is still the law, except as to employers enumerated in the new statute, and as to them it provides that they will still be liable to their employees for personal injury by accident to any workman arising out of and in the course of the employment which is caused in whole or in part, or is contributed to, by a necessary risk or danger of the employment of one inherent in the nature thereof, except that there shall be no liability in any case where the injury is caused in whole or in part by the serious and wilful misconduct of the injured workman.

It is conceded that this is a liability unknown to the common law, and we think it plainly constitutes a deprivation of liberty and property, unless its imposition can be justified under the police power * * * *.¹⁹

The decision then holds that the statute is not a proper exercise of the police power.

¹⁸Bulletin of Bureau of Labor, p. 701 (1910).

¹⁹Ives *vs.* South Buffalo Crosstown Railway Co., New York Law Journal, April 3, 1911.

The court treats at length of legislation sustained under the police power, but shows that in order to sustain it, its operation must tend in some degree "to prevent some offence or evil or to preserve public health, morals, safety and welfare. If it discloses no such purpose, but is clearly calculated to invade the liberty and property of private citizens, it is plainly the duty of the courts to declare it invalid, for legislative assumption of the right to direct the channel into which the private energies of the citizen may flow, or legislative attempt to abridge or hamper the right of the citizen to pursue, unmolested and without unreasonable regulation, any lawful calling or avocation which he may choose, has always been condemned under our form of government.* * *

But the new addition to the Labor Law is of quite a different character. It does nothing to conserve the health, safety or morals of the employees and it imposes upon the employer no new or affirmative duties or responsibilities in the conduct of his business. Its sole purpose is to make him liable for injuries which may be sustained wholly without his fault and solely through the fault of the employee, except where the latter fault is such as to constitute serious and wilful misconduct.

The court further says:

We cannot understand by what power the legislature can take away from the employer a constitutional guarantee of which the employee may not also be deprived. * * * Conceding as we do that it is within the range of proper legislative action to give a workman two remedies for wrong when he had but one before, we ask by what stretch of the police power is the legislature authorized to give a remedy for no wrong.

In the course of its opinion the court recognizes the entire right of the legislature to abolish or modify the fellow servant rule and the law of contributory negligence and, even to a limited extent, as to the assumption of risk by the employee.

"In the Labor Law and the Employers' Liability Act, which define the risks assumed by the employee, there are many provisions which cast upon the employer a great variety of duties and burdens unknown to the common law. These can doubtless be still further multiplied and extended to the point where they deprive the employer of rights guaranteed to him by our constitutions, and there of course they must stop."

The whole opinion is comprehensive, clear and consistent. It will have a very great influence on the minds of those who are considering the subject.²⁰ A previous decision in Pennsylvania, where a mine owner was sought to be held liable for accidents arising from the neglect of a foreman, indicates similar views on the part of the Supreme Court of Pennsylvania.²¹

It would seem that workmen's compensation acts, drawn upon the plan of giving an election both to employer and employee either to avail themselves of the plan or their common law remedies, may be sustained, but such acts must not make the employer liable where he has been without fault.

From a study of the cases it is obvious that the solution of the problem of a compulsory compensation act, acceptable both to the employer and the employee and free from constitutional objections, has not yet been discovered. Meantime large corporations, such as the United States Steel Corporation, the International Harvester Company and others are putting in practice with much success the plan of voluntary compensation.

²⁰Ives *vs.* The South Buffalo Ry. Co., New York Law Journal, April 2, 1911.

²¹Durkin *vs.* Coal Co., 171 Pa., 193.

LEGAL ASPECTS OF EMPLOYERS' LIABILITY LAWS

By HON. J. MAYHEW WAINWRIGHT,
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Employers' Liability Commission.

Law is supposed to be the embodiment of the public sense of justice. Whenever dissatisfaction with a particular law becomes prevalent and there is a general demand that it be changed or abrogated, it is safe to assume that it has ceased to meet the public conception of justice. Such is the case with our common law regulating the liability of employers for the personal injuries sustained by their employees in the course of their employment, namely, the law of negligence as applied to master and servant. It has ceased to satisfy the public conception of justice.

Even though every civilized country in the world, except our own, had not abandoned the system of law which holds the employer liable only when there is a basis of fault, we still would have abundant evidence that it does not meet our own modern industrial requirements. It has been indicted in many states, received a fair and impartial trial by careful investigators and been found wanting. It provides indemnity for but a small portion of the injured workers or the dependents of those who lose their lives. It leaves them to bear not only all the physical pain or mental anguish, but most of the financial loss. Few of those injured receive any pecuniary relief, and most of these but a pittance. Yet the employers are obliged to spend large sums to protect themselves against liability, of which sums the victims reap little benefit. The system affords woefully inadequate and tardy relief to those in need of immediate assistance. It is a fruitful source of antagonism between labor and capital. It is not only wasteful of huge sums paid out in premiums which otherwise might go towards furnishing relief, but also of public moneys which must be expended unnecessarily to sustain an expensive legal machinery. Economists, sociologists, judges, lawyers, legislators, employers and employees all condemn it. Almost twenty years ago a Royal Commission in England in its report characterized it as "an unfair law, operating op-

pressively against workmen as a class." Largely upon the strength of that report England adopted its first Workmen's Compensation Act, providing for the payment of damages by employers in hazardous occupations for all accidents regardless of negligence, of which Lord Salisbury said: "To my mind the great attraction of this bill is that it will turn out to be a great machinery for the saving of life."

Thirty years ago the Germans discarded the principle of negligence and with true statesmanship adopted a system providing for general indemnity practically without regard to the fault of either employer or employee. They have all recognized the principle that all or most of the trade risk should fall upon the industry as represented by the employer rather than on the workman. It is, to say the least, an anomaly, that of all the civilized countries the United States, with all its boast of progress, enlightenment and advanced ideas of justice and humanity, should cling to a system branded abroad as inadequate, if not inhuman. Yet, in making the change, these foreign governments have not been animated so much by sentiments of benevolence as by the conviction that the old system was economically unsound.

We, ourselves, have not adhered strictly to the common law. The changed and complicated conditions of modern industry have impelled many of our states to modify, some to abolish, the fellow servant rule; others to change the rule as to assumption of risk, and either to shift the burden of proof of contributory negligence or to adopt the rule of comparative negligence, where both are at fault. They have sought to impose a more stringent liability upon the employer, and to increase the workman's chances of recovery. But all competent to judge appreciate that but a partial solution of the problem lies in this direction; that it can never be satisfactorily solved through the medium of the old law; that if we are to adopt the principle that the cost of industrial accident shall fall upon the industry, we must in some direct or indirect manner provide for certain universal compensation, either through a general or limited workman's compensation act or through a system of compulsory insurance. In either case, the burden must fall on the employer. He is better able to bear it, and can if he will pass it on by an increased price of his commodity or service. He must be compelled to pay the workman or his dependents directly the scale of

compensation fixed by the act, or must contribute the major part of the insurance fund, without regard to whether he was at fault or whether the accident arose from an inherent hazard of the trade through no negligence or fault on his part.

And here we meet the great constitutional difficulty. The Constitution of the United States provides that no man shall be "deprived of life, liberty or property without due process of law." The courts declare that to hold a man when he is not at fault liable in damages for injuries sustained by another is equivalent to a deprivation of liberty and property. He cannot be so deprived unless the deprivation can be sustained under that broad principle so deeply imbedded in our jurisprudence and now so frequently invoked to overcome some apparently constitutional difficulty, namely, the police power.

Here are some phases of the problem. Will the police power sustain a general compensation act, or will it uphold one of a limited scope? If neither, can we secure one through indirection by inferring from his failure to assert his constitutional right, that the employer has agreed to some general scheme of compensation, or can we, by depriving him of all his common law defenses, drive him into an agreement with his workmen for compensation? Or can we put in force some scheme of insurance assuring the workman certain indemnity against accident? Or will it on the whole be wise to ignore all question of law and remedy and trust to the voluntary action and benevolence of employers?

The bolder spirits typified by the Committee of the National Civic Federation believe that the police power will sustain a general statute covering all or nearly all occupations where the fact of the accident will be sufficiently indicative of the inherent danger. They have proposed such a statute for general adoption. It has, I believe, already been adopted in one state, Kansas. New York, with greater caution, has deemed that the police power would not extend beyond the obviously dangerous or extra hazardous trades. So we adopted an act applying to a particular classification of dangerous industries. Wisconsin, with even greater caution, has not relied on the police power, but proposes an act providing that unless employers or employees declare in writing to the contrary, the contract of employment will be deemed to embody general compensation. While New Jersey, after smiting the employer by knocking out the

props of the fellow servant and assumption of risk rules, adopts in addition the Wisconsin method. Ohio is about to attempt a plan of insurance.

And now, after all the legal talent at the command of the various commissions and committees have ventured their views upon the constitutional perplexities involved, the Court of Appeals of our state has defined the constitutional rights of the employer to be such that no straight workman's compensation act can be enacted by us that does not violate the fourteenth amendment to the Constitution of the United States and the similar provision of our own state constitution. (*Ives vs. South Buffalo Railway Co.*)

It is putting it mildly to say that the decision of our court is a crushing blow to workman's compensation. The confident expectation of those who have taken part in this great movement that what has been accomplished abroad could also be realized here, has been turned to doubt and misgiving. If this decision that the police power is not broad enough to overcome the immunity of the property right of the employer under our constitution, is correct, then a similar immunity must exist under the Constitution of the United States. The language of the two constitutions is similar. The interpretation of our court applies equally to both.

My respect for the ultimate tribunal of the co-ordinate branch of our state government is such that I do not feel justified in commenting on this decision beyond saying that it seems inconsistent not only with its own decisions but with the conception of the police power apparently entertained by the Supreme Court of the United States, that it indicates a turning back of the hands of the clock. But our court has declared that the legislative branch has transcended its power. Their word is now the law to which our people and legislature must bow. An enactment which received the almost universal endorsement of the press, the bar, many of our judges and public sentiment generally has been declared unconstitutional. The pity of it is that the court recognizes the need of this reform. It declares that "any plan for the beneficent reformation of this branch of our jurisprudence in which it may be conceded reform is a consummation devoutly to be wished." It in effect declares that our act provides substantial justice but not sound law. The effect of this decision precludes the adoption of any compulsory scheme of compensation, and probably also, of compulsory insur-

ance, for it would probably be equally objectionable to compel the employer, who is without fault, to contribute to an insurance fund. We may, of course, amend the constitution of our state. But this will not remove uncertainty. We will then still have to face the effect of the limitation of the United States Constitution. But with such an amendment we could at least bring the question before the Supreme Court. No appeal will lie from the present decision. Even though we could get this law of ours before the Supreme Court in some other action begun in a federal court, the court might hold itself bound by the interpretation of the state court of the limitation imposed by the state constitution operating upon a state statute. Thus, in New York, we cannot expect any direct reform except through the slow process of an amendment to our state constitution, with the federal question still before us. True, it may be possible to achieve the same result through indirect means. We have already modified the Employers' Liability Statute by weakening the employer's defenses and offering him a way out from the increased liability so imposed, by providing that he may contract with his employees for compensation. We may go further in this direction and drive him into offering such an agreement to his workmen. But any such plan can be at best but a makeshift. The workmen of course will favor it, as it will not only preserve the alluring chance of the large verdict, but will vastly increase the cases of possible recovery, as well as provide him with certain compensation. The employer will soon rue it, for the workmen may decline altogether to enter into the agreement, and leave him with his liability overwhelmingly increased. Thus far but one employer has taken advantage of our elective plan. Or we may adopt the other indirect plan of assuming that the employer waives his constitutional rights and agrees to compensation, unless he specifically declares to the contrary. This might accomplish the result. But would not such a plan be open to as serious constitutional doubt as direct workman's compensation. Can a man be deprived of his constitutional rights by an inference that he elects to waive them?

Such indirect plans involve at best a "whipping of the devil around the stump." If they are feasible and will prove effective, what a singular commentary of our constitutional system will be presented! What the constitution prohibits from being done directly can still

be accomplished by indirection. This great economic and legal reform can only be secured through the medium of a quasi constitutional fraud.

A permanent solution can never be secured except through a compulsory compensation act or some reasonable plan of compulsory insurance. The reliance of the vast number of our citizens, possibly a majority of all who are vitally interested in this matter, must rest upon the wisdom, sense of justice and broad constitutional vision of the Supreme Court of the United States. If we are correct in believing that justice and the general welfare require a change from our present system of employers' liability, surely that change must be possible under a national constitution ordained to "establish justice," to "insure domestic tranquillity" and "to promote the general welfare." If it appears to violate the letter of some particular clause in that constitution it must be justified under the police power which that greatest of all courts of law has recently declared "to extend to all the great public needs" and which "may be put forth in aid of what is sanctioned by usage or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

Noble State Bank vs. Haskell, 219 U. S. 104.

We indulge the strong hope that a statute of some other state may soon be brought for review before that court, and entertain the confident belief that it will be sustained by a court which has also declared "that the law must adapt itself to new conditions of society." (*Holden vs. Hardy, 169 U. S. 366.*) Surely a conception of the police powers which have sustained an act taxing one party to guarantee the debts and defaults of another will include the principle upon which a workman's compensation act must rest. A great demand for this reform is sweeping over the country. It will be unfortunate indeed if our fundamental law shall be found so inflexible as not to yield to a demand for a reform, which the statesmanship of every other civilized country has provided. It is safe to say that its progress cannot be stayed by any unfavorable court decision. If the Supreme Court, in its wisdom, finds that proposed system is incompatible with the fundamental law, then the difficulties of securing an amendment to the Constitution of the United States will probably not deter those who believe the reform is necessary. Let none suppose that the advocates of this humane

proposal in New York will be downcast or deterred from further action by the decision of our court. Rather, they will gird their loins for such effort as can only end in a direct, complete and final solution. They are not yet prepared to strike their colors. They have only "just begun to fight."

A COMPENSATION LAW AND PRIVATE JUSTICE

By P. TECUMSEH SHERMAN,
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In the states of the civilized world there are two systems of employers' liability for accidental injuries. The first, which formerly prevailed in all, but which now survives only in the United States and, in a transition stage, in Switzerland is that of tort, or more particularly the master and servant branch of the law of negligence. The second is that of "compensation," which embraces both "simple compensation" and also its more complex form of "compulsory insurance"—for "compulsory insurance," where and in so far as it is at the expense of employers, is in effect simply a liability to pay compensation for accidental injuries to employees, with a legal obligation added to insure its payment.

The majority of the advocates of "compensation" base their arguments entirely upon reasons of social welfare. Under that line of argument, in order to sustain a compensation law under our constitutions, it is necessary to rely exclusively upon the "police power"—a power possessed by the state which permits it to inflict individual hardship and injustice where necessary for the public welfare. But the law should seek, wherever possible, to effect private justice; and the case for "compensation" would be infinitely strengthened and the probability of repetitions of the reverse suffered in the recent decision of the New York Court of Appeals would be diminished if it can be demonstrated that the liability, as between master and servant, which the compensation law imposes, is just. In my opinion that liability is just, not absolutely, just in theory, because it abandons the unattainable ideal of affecting exact justice in each particular case, but as just as is possible in practice and relatively most just in comparison with the existing liability for negligence. In this paper I shall endeavor to explain my reasons for that opinion; but in order to be brief and for that purpose to avoid complexities from varying conditions I will limit my arguments to those which apply with full force only to employment in the more hazardous organized industries, to which, in my judgment, our first experi-

ments in the law of compensation should be limited in their application.

In my opinion the two systems of employers' liability law are not totally different in their fundamental principles of private right, but the principles of the compensation law are developments from the principles of the negligence law, corrected to conform to the lessons of experience and to modern scientific knowledge and modified with a view to concrete as distinguished from abstract justice. While the foreign compensation laws are all shaped in many of their details, and in some cases in their entire forms, with a view solely to the general social welfare, nevertheless as a system it will be found that the principles of private justice underlie them all. If this view is sound and if those principles of private justice become generally accepted here, then the substitution of the liability for compensation in the place of the existing liability for negligence would be in accord with, instead of being a departure from, the spirit of our common law and of the principles of the Bill of Rights in our constitutions.

The compensation law, as a rule of private justice, differs from the law of negligence in principle in that it changes the rules of "contributory negligence," of "assumption of risks" and of "fellow servant," the criterion of "negligence" and the rules governing the burden of proof—and in that it fixes a definite and limited measure of the amount of the liability.

Our rule of "contributory negligence" is peculiar to the common law, and there are now few who believe in its justice. But although the rule may be unjust, yet simply to abolish it and to make the employer liable for full damages, as if there had been no contributory negligence, would be equally unjust, because that would merely shift the injustice from the workman to the employer. The proper correction is to divide the damages. That is what the Admiralty and the civil laws have always done, and what the compensation law in effect does.

The justice of the "assumption of risks" rule is predicated upon the premises that workmen are free to assume or reject hazardous employment, and, consequently, that when they accept such employment, they should be deemed to contract freely to assume its risks; and that wages in hazardous employments are higher in proportion to the hazard so as to compensate for such risks. But

facts demonstrate that working people in the mass are not economically free to accept or reject hazardous employment, and that wages are not at all in proportion to risks. Therefore, the premises upon which the rule of assumption of risks is based are generally false, and the rule itself is not a true rule of justice. But if justice requires the abandonment of the assumption of risks rule, its corollary, the fellow servant rule, should also be abandoned; for danger from the faults of intimately associated fellow servants is one of the occupational risks, *all* of which, as a general rule, a workman either should or should not be deemed to assume. And so far as the fellow servant rule is supported by reasons of public policy, it has no true application to the organized industries, wherein the individual workman cannot, by any degree of care, protect himself from the faults of his fellows.

But here again the proper correction is not simply to abolish the defences of "assumption of risks" and of "fellow servant" so as to leave the employer liable for full damages, for that would merely shift the injustice and make the employer liable for a wrong, where he has been guilty of no wrong. The compensation law solves this problem of justice by treating all the necessary risks of employment as joint risks, of which the consequences should be shared between the employer and his injured workmen; and it accordingly imposes upon the employer a legal liability, similar to that of an insurer, to pay to his injured workmen, or their dependents, his share (generally one-half) of their wage losses resulting from such risks. This conception of a joint occupational risk, of a mutual responsibility for accidents from occupational risks, of a moral partnership in the resulting losses, is the great basis of the compensation liability. As a conception of justice it is primary and must either be accepted as an axiom or be rejected. But the idea of its justice is fortified by the fact that as a rule of public policy it has practical merits and advantages above all others. It, therefore, appears to be the best rule for the social welfare and, at the same time conforms to a widely accepted idea of justice.

The next point of difference between the two systems of law is the criterion which determines when, on the one side, the employer shall be subjected to liability for full damages, and when, on the other side, the injured workman shall be deprived of the right to any redress. Under our master and servant law that criterion is

"negligence as a proximate cause"—a criterion which in practical application is so indefinite and uncertain in meaning as to be most unsuitable for that purpose, as is evidenced by the thousands of litigated cases to which its definition has given rise. It has the further demerit of being scientifically superficial. Under the compensation law that criterion is "moral fault," variously defined, but always so defined and limited as to include only such a degree of certain moral fault as justifies, beyond doubt or reasonable difference of opinion, the infliction of a penalty upon the defaulting party. From the application of this latter criterion it results that that large proportion of accidents, which are due proximately to lack of ability, misjudgment, lack of skill, ignorance, physical or mental lassitude, mere inadvertence or that kind or degree of negligence which, humanly speaking, is at times inevitable even with careful men, and which, under our negligence law, result in a mass of litigation and entirely fortuitous determinations, are, under a compensation law, not attributed to fault but rather to the necessary risks of employment; and, consequently, for injuries resulting therefrom the employer is made liable to pay his share of the injured workmen's wage losses in the form of compensation.

The next difference between the laws of "negligence" and of "compensation" is that under the compensation law there is a presumption of fact that every accident results from a necessary risk of the employment or from some cause or causes for which employer and injured employee are jointly responsible, and is, therefore, a subject of compensation, unless fault is proved; and the burden of proving fault is upon the party asserting it. Is that presumption just? My answer to that question is that an intensive study of the causes of accidents in New York factories and a critical analysis of the European accident statistics convinces me beyond all doubt that, at least under conditions which prevail in the organized and hazardous industries, that presumption is true, and therefore just.

The final difference between the two laws is that under the compensation law the amount of compensation is measured by the law instead of by the almost unlimited discretion of the jury, and is made dependent upon certain definite facts, which are generally easily and certainly provable. Whether this method of fixing the amount of the liability is just or not should be determined by its

results. The object of the law is to do justice. It should, therefore, be framed to effect average concrete justice, rather than to declare abstract rules of exact justice which cannot be carried out in practice; and this rule of the compensation law has these qualities of concrete justice, which are entirely lacking in the negligence law, that it is generally prompt, certain and uniform in its operation.

Finally, the compensation law possesses that highest attribute of a just law, that it satisfies the natural sense of justice of the parties affected by its application; for it is the general testimony of both employers and employees in the majority of the compensation law countries that the law in the main is just and satisfactory.

In contrast with the compensation law, our negligence law gives universal dissatisfaction. Not only is it in many respects absolutely unjust, but even so far as its theories are just it fails to carry out those theories in practice, but results instead in a medley of cruel wrong, oppressive waste and delayed or compromised justice. Moreover, its theories are such that they cannot be carried out in practice, because that would require an impossibility, namely: that accidents be correctly traced to their respective causes and the responsibility for those causes correctly weighed and determined by judges and juries. Abroad, even experts, making many of their investigations on the spot and unhampered by the motives for concealment which prevail here, cannot with any certainty determine the true causes of and responsibility for a large proportion of the accidents which they investigate, and, as to the mass of industrial accidents, can only arrive at rough opinion estimates of average causes and responsibilities. It is obvious that judges and juries, especially under our methods of procedure, are infinitely less able to arrive at that exact determination of the causes of and responsibility for each accident which a correct application of our law requires. Therefore our law, even in so far as it is good in theory, is absurdly bad in practice.

The fault lies not so much with the machinery of our courts as with the law itself. For the law starts from an unfair basis, by imposing the burden of proof entirely upon the injured workmen, and thereby insures injustice to them where, as happens, in a large proportion of cases, from the very nature of the accidents, there can be no real proof. And, where there is a scintilla of proof, our law is wrong, not so much in making jurors judges of the facts, as

in making them judges of a broad field of inferences from distorted versions of a part of the facts, without scientific rule or reason to guide them. The result not only is, but must be a pure gamble, more expensive, wasteful, distressing and corrupting than any form of gambling prohibited by the penal law.

In my opinion it is altogether a mistake to seek to remedy the existing evils along the lines of our "employers' liability" statutes. Those laws are in too many respects grossly unjust to employers, increase litigation, are expensive and wasteful, are slow and uncertain in results, and furnish small additional relief to the victims of industrial accidents in the mass. And they have a disastrous effect upon the public welfare, for they foster class antagonism between employers and employees, and they interfere with proper methods for the prevention of accidents by establishing through the decisions of our courts harmful rules and precedents on questions affecting safety.

An illustration of this last proposition may be enlightening. We have in our New York Labor Law a provision that certain machinery shall be "properly guarded." The factory inspectors, in their enforcement of that law, construe that provision to mean that such machinery must be so arranged, placed, boxed, railed off, or provided with safety appliances as to be made as safe as practicable. But our courts construe it more literally to mean that such machinery must have applied to or about it something extra as and for a guard, without particular regard to whether or not that will make the machinery more safe or more dangerous. Of course, the courts have not categorically said that, but that is the effect of what they have decided. There are many cases in New York where juries have awarded and our higher courts have sustained verdicts for punitive damages against employers for not guarding their machinery in a way which, according to the overwhelming preponderance of expert opinion, would make it more dangerous. Such decisions are the opposite of or conducive to the general adoption of correct methods for the prevention of accidents. And this is but one of many points about which the reasonings and decisions of our courts on questions affecting safety are as foreign to scientific truth as are the ideas of an Indian medicine man about the causes and prevention of disease. It is a principal merit of the compensation law that under it questions of industrial safety would

cease almost altogether to be a subject for judicial determination, and that the intelligence and efforts of employers would then be directed towards the prevention of accidents instead of towards the maintenance of arbitrary conditions and practices which will merely prevent liability for accidents.

While it is not demonstrable that the compensation laws have effected any reduction in the proportion of accidents, because there is not the requisite data for purposes of comparison; yet it is certain that the imposition of the compensation liability in lieu of all others (save in exceptional cases), would remove many difficulties in the way of studying the causes of accidents and the methods of their prevention, and would aid in the enforcement of safety regulations and be conducive to their voluntary adoption. And it is equally certain that our law has just the opposite effect, because it gives rise to an impellent motive for both the employer and the workman who is injured in an accident to suppress or falsify all the facts relative to that accident which might adversely affect their respective legal rights or liabilities. Consequently, in our country, this subject is to a degree hidden from expert investigation by a fog of suppression, misrepresentation and positive falsehood.

In conclusion I wish to emphasize three propositions, namely: that in the highly organized and hazardous industries the real causes of accidents are generally so complex and in addition often so remote, that as to a material proportion of the accidents it is impossible, by any methods or means, correctly to ascertain the facts necessary to form a correct judgment of their particular causes; that as to a yet larger proportion it is practically impossible to do so without such expense and delay as will defeat justice; and that as to those accidents, as to which the necessary facts are practicably ascertainable, there is no simple abstract term, such as "negligence," "carelessness," "fault," "gross negligence," etc., which, if used as a criterion of legal liability, will not result in frequent and gross injustice and inequality, whether administered and applied by courts and juries or by more competent experts. At first impression the exactness with which industrial accidents are classified in the German and Austrian statistical tables, under the headings of "due to fault," "unavoidable," "due to lack of skill and carelessness," etc., may seem to contradict these propositions. But in so far as those tables produce that impression they are misleading; for,

as to a major proportion of the accidents classified therein, the facts have not been thoroughly investigated, but rough statements have been relied on, and there is therefore in them a wide margin of probable error, due to that one cause; and the terms used in those tables are so far from being definite and are employed in each table with a meaning so uncertain in application and so peculiarly personal to its compilers that a re-classification of the accidents covered by that table, under the same terms, by a different set of experts, would inevitably produce widely different results. The conclusion to be drawn from these premises is, that the idea of ascertaining the facts as to each particular industrial accident and then determining liability according to the application to those facts of some simple abstract rule cannot be carried out in practice; but that, in order to obtain a rule of law which will be at all fair and uniform in practice, it is absolutely necessary to resort to the doctrine of averages. That is what the compensation law does by presuming in effect, save in exceptional cases where the contrary is proved, that every accident is due to a necessary risk of employment or to some other cause or causes for which employer and injured employee are jointly responsible; and it divides the damages accordingly.

In arguing for the justice of a compensation liability in the organized hazardous employments, I am not arguing against its justice in the unorganized or safer employments, because I believe that, with some important exceptions and subject to certain conditions, it would also, in practice, be more just therein than the existing liability for negligence. And I am not arguing that reasons of justice alone should determine the form which a compensation law should take; for I believe that reasons of social welfare and many other reasons should in many respects determine both the form and the extension of such a law. But I insist that such a law as that of master and servant should be based upon conceptions of private justice; and that the compensation laws are so based, and are not unprincipled measures of mere political expediency.

AN ARGUMENT AGAINST LIABILITY

BY WALTER S. NICHOLS,
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To me there is a graver issue involved in the enactment of liability laws in this country than the mere compensation of an injured employee. Our recent conceptions of an employers' liability are of foreign birth, the outgrowth of socialistic theories, which for years have been gradually permeating the states of Europe. There are two phases of this question which do not seem to be receiving the consideration which they deserve. I hold that under the spirit, if not the letter of our constitution, no ordinary employer of labor can justly be made liable for an injury for which he was not actually or constructively at fault, and that every attempt to impose such a liability is an attack on the manhood of employees as American citizens. Subject to the legitimate police power of the state, every American freeman has the constitutional right to contract for his services. Under all ordinary circumstances, this contract assumes that he is capable and willing to perform the work which he undertakes. Such service in free America, at least, is not different in its fundamental character from other business contracts; it is simply an exchange of personal labor for money compensation. Both parties are independent contractors. There is no more reason in the nature of things why a freeman who contracts for his manual labor should impose on the party with whom he contracts responsibility for injuries which are due to no fault of the latter than why a like responsibility should not attach to other forms of contract. As well might the architect or the builder who contracts for the erection of a dwelling allege the same responsibility. The fact that the ordinary servant is under a stricter and more detailed control goes no further than to enlarge the duty of the employer to see that his own acts are free from blame.

The only ground on which such legal responsibility can be claimed is the exercise of the police power of the state based on public policy. Is there any public policy which would sustain such police power in the case of ordinary employments? Here, a false

theory seems to have been universally accepted. It is assumed that employees would escape injury except for the special work in which they may be employed; that the responsibility for the injury attaches to the particular work being done. On the contrary, it may well be questioned whether in the ordinary occupations of life the risk of accident is not even less among those actively engaged in the service of others than if not so engaged. The employee is not a mere piece of mechanism, carefully housed and sheltered from danger except when actively in service. He is a man and a member of society, with all the obligations imposed on him by such membership. First and foremost of these obligations is that he shall do his legitimate share of the world's work. To earn his bread by the sweat of his brow is a law of nature imposed on man in his very evolution from a lower vertebrate. It is a law whose principle lies at the very foundation of all life, even that of the lowest monera or of the vegetable cell. Conscious or unconscious activity is the very essence of life. The evolution of society has simply moulded the lines along which this activity must be directed. It has simply organized the members into a social system under which their labor is differentiated and its fruits exchanged instead of, as among their savage ancestors, every man working for himself. We have simply exchanged slavery to untamed nature for a lesser servitude to society at large. Whether employed in the service of another or not, every man is exposed to the risk of accidental injury. There is nothing in all this which suggests a natural claim of one member against another for injuries due to his own fault or misfortune. On the contrary, the whole development of society has been along the line of protection to the worker. It is as true to-day as it was a thousand years ago that in the ordinary occupations of life the worker is in reality in a measure safeguarded through his very employment. Not until now has the truth of this great principle been seriously questioned. From the buried cities of Mesopotamia are unearthed the records of contracts made six thousand years ago, and in the laws of the Roman Empire, we may read the story of their transmission in spirit to the nations of modern Europe and to America. But nowhere heretofore, so far as I know, has the right and ability of a freeman to assume the risk of his employment been questioned.

What are the grounds of that public policy which it is claimed

has changed the nature of this contract relation that has existed from time immemorial? We are told they are to be found in the complex conditions of modern industrial life, under which the employee is subject to risks more hazardous than ever before, and to that greater economic differentiation which has widened the gulf between the workman and his employer, which has weakened the personal relations once existing between the two, and has reduced the former to little more than a machine to be exploited under a new system of employment, representing not men but soulless corporations; that giant monopolies of capital have practically reduced the workmen to a condition of industrial servitude. For these reasons, it is urged that public policy calls for the intervention of the police power of the state to compel either the individual employer or the state itself to assume that responsibility for injuries to the workers which they themselves formerly bore.

Whatever may be said for this argument under the monarchical systems of the old world, it fails in its application here, unless our whole theory of government is to be abandoned for another on essentially socialistic lines. The broadest liberty of the individual consistent with his obligations to society was a corner-stone, on which our whole national fabric was reared, and closely allied to it was another, protection of individual property rights against aggression even by the state. When Webster won that immortal decision concerning the sacred rights of property and of contract in the Dartmouth College case, which has ever since been the law of the land, he welded a construction into state and federal constitutions only less important than that involved in the conclusion of his famous debate with Hayne, a construction which has cost the best blood of the land to maintain "the Union now and forever, one and inseparable." Under our constitution, as it now stands, no plea of police power can well divest an employer of his property on the ground that he is liable for an injury where he was without fault. The application of this principle has been sought to be avoided by using the police power of the state to abridge the right of contract and compel the employer to incorporate the tacit assumption of a liability for injuries in his agreements with his workmen. How far the police power of a state may thus abridge the right of contract yet remains to be seen. In right reason, it would seem that no such power should exist in ordinary contracts of employment in which,

as already explained, the hazards of occupation are not essentially different from those of ordinary life. The workman here is asked to assume no increase of risk which can fairly be charged against the property of his employer, or be made a basis for public compensation, unless socialism is to be substituted for individualism in the spirit of our constitution. To employ and to be employed is a fundamental right of every citizen of the Republic, the very essence of our economic existence, even more—of our very civilization. No police power can properly abridge it more than the public welfare absolutely demands. It may well be doubted whether any plea of public policy can impose on every man who ventures to contract for the service of another an unknown liability for injuries due to the fault or misfortune of the latter with all its attendant train of fraud and blackmail, and it may be at the risk of his own financial ruin. No policy would seem more destructive to the actual welfare of the state. While in the case of certain corporate carriers, creatures of the state and impressed with duties to the public, such police power has been at times sustained, the Court of Appeals of New York in its recent decision has, by a unanimous vote, emphasized the principle that no public policy can be invoked to sustain a law which thus divests an employer of his property without his own fault, even though his liability may be limited to exceptionally dangerous risks. Our neighboring state of New Jersey in attempting to evade this decision by depriving the employer of his present protection by the court in case of his refusal to accept an unconstitutional law, strongly suggests an attempt to whip the devil round the stump. The defenses which it would deny him are grounded not on mere expediency, but are rooted in those principles of natural justice which underlie our economic system and have been well established in all our jurisprudence.

As a dictum unnecessary for the decision of the case, the New York Court of Appeals has declared that both the fellow servant and the contributory negligence clause as defenses are within the scope of legislative control. But it as strongly affirms that neither can be so modified as to impute to the employer a fault due to the employee. Both these clauses relate to the legal cause of the accident. The question of responsibility depends on this legal cause. Whether a fellow servant or an assumed negligence of the employee is in the legal sense the efficient cause or a mere link in the chain of

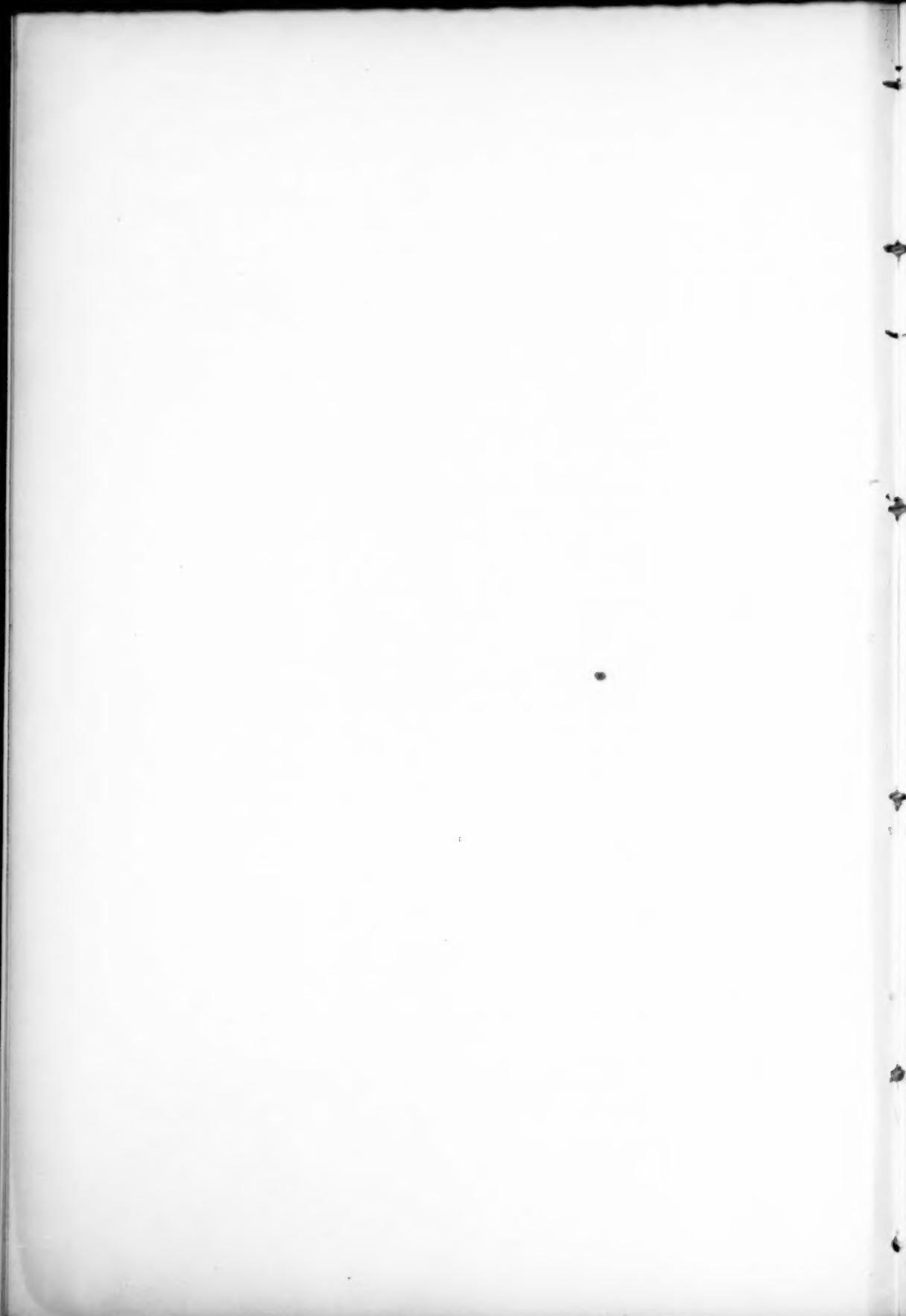
casualty, which no court will consider, must still remain, it would seem, a valid question of law regardless of such enactments as that of New Jersey. The act or neglect of the employer must still be the efficient cause of the injury in order to constitutionally impose on him the liability.

But gravest, perhaps, of all objections is the effect of such legislation both on the working men themselves and on the commonwealth at large. By such laws those who contract for their personal services are placed in a class by themselves politically subordinate to the rest of their fellows. They are no longer to be dealt with as freeborn citizens competent like others to care for their own affairs, and capable like others of engaging in all the activities of business life unfettered by political restraints. To them the words of the great declaration promulgated in this city a hundred and thirty-five years ago that all men are born free and equal and entitled to life, liberty and the pursuit of happiness must have a changed meaning. They are to be dealt with as incompetent wards of the state who must be protected against themselves, incapable of freely contracting for their services and subject like the medieval serfs to assumed task-masters, who must answer for their safety and be responsible for their mishaps. Is that to be the future spirit of our constitution and of our economic system? Is it the spirit of Americanism under which our country has achieved its greatness? The employee of yesterday will be the employer of to-morrow. Our future captains of industry will be recruited not from the ranks of wealth, but from the descendants of the horny-handed sons of toil. Politically, America knows no servile class. Is all this to be changed and a spirit of state socialism to be inculcated in our rising generation through the operation of laws which make the employer the keeper of those whom he employs? To-day one of the gravest financial problems which confronts our local systems of rapid transit is the damage suit for real or alleged injuries to those in transit. Fraud and blackmail play a leading part. In New York, the passage of the recent Employers' Liability Law was the signal for a heavy increase in the claim ratios of the insurers. From England, and even Germany, come the same story of the weakening of the moral fibre of the classes whom such laws aim to protect.

We are treading on dangerous ground in seeking to follow the footsteps of Europe regarding employers' liability. We are in

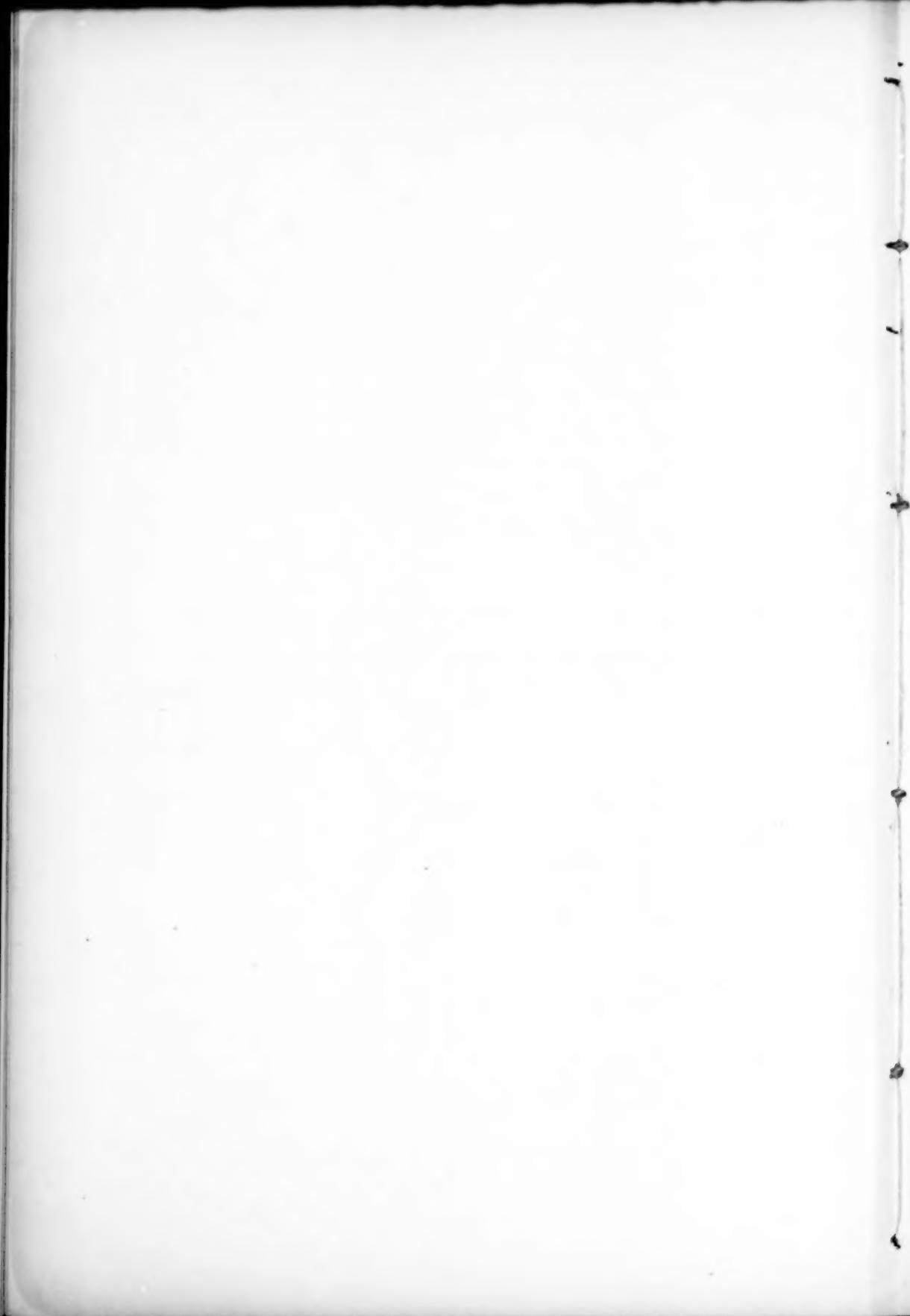
danger of sacrificing the nation's birthright; the independent manhood and political equality of the individual citizen won by the founders of the Republic through the sufferings at Morristown and Valley Forge. Can the American people afford to surrender it for any gains that may come through the better protection of the working classes against the risks attendant on our complex industrial conditions? Is it not better that another solution of this grave industrial problem be sought? To me the true solution lies along the line of insurance, not compulsory but voluntary, on the part of the workman himself as an intelligent self-respecting citizen to whom has been committed his full share in the government of his country. Aided and encouraged he may well be by any legislation which will not sacrifice his manhood or violate the constitutional rights of his fellow members of society. It is right that he should be protected and he should be educated to it as to every other civic duty. It is right that the cost of his protection should be an element of his compensation for his labor. But I believe that in doing so no jot or tittle of the spirit of the American Constitution should be surrendered. Not long ago, the business activity of all France was suddenly checked by a gigantic strike of employees to ameliorate their social conditions. The hand of the government itself was threatened with paralysis. It was successfully met and its backbone was broken by a call to the colors. The strikers were called on to choose between their obligations to their country and the betterments for themselves which they sought by overturning its social order. The spirit of patriotism prevailed and they rallied round the flag. The same fundamental issue underlies this question of liability legislation. Shall it be dealt with in a spirit which recognizes the paramount claims of the constitutional principles on which our government was established, those of political equality and individualism, or shall these be sacrificed for socialistic principles which will divide society into two classes: one of industrial serfs, wards of the state incapable of self-protection, the other of overlords commissioned to be their legal guardians? It is natural to move along the line of least resistance and to seek the remedies which offer the speediest relief regardless of the future. But I take it that the manhood of the future American citizen and the political equality which is his birthright may be worth even more than the material advantages of socialistic laws. When the proud Roman matron declared of her

sons, *haec mea ornamenta* (these are my jewels), she uttered a truth which equally applies to every commonwealth. The real strength of a nation lies in its citizens, not in its material possessions. The downfall of the mightiest empire of antiquity was heralded by its accumulating wealth attended by the breaking down of the moral fibre of its people. I would have every worker standing side by side with his employer as a political sovereign trained to insure his own protection and aided, if need be, by the state within constitutional lines to exact the compensation for his services necessary for the purpose.



PART FOUR

Legislation Concerning Employers' Liability and Workmen's Compensation



CONDITIONS OF PROGRESS IN EMPLOYERS' LIABILITY LEGISLATION

BY HON. CHARLES P. NEILL,
Commissioner of Labor of the United States.

In order to disarm criticism, I want to say frankly, at the outset, that if any one, at the conclusion of my remarks, says, it has been merely the accentuation of the obvious, I shall plead guilty, and it seems to me that what is needed just at this time is to accentuate the obvious, for we seem to be overlooking it very decidedly. Our topic is "recent progress in legislation," and I am going to take legislation in its very broadest sense, that is, the making of laws. Law, in a self-governing political organization represents the crystallization of public opinion; it represents the formal expression of what the community thinks is the right and the wrong in a given set of social or industrial relations. Therefore, progress in legislation starts with the forming of a public sentiment. In many cases, such as the present case, it consists in reforming public sentiment, and public opinion. We have, for three-quarters of a century, in the relation of employer and employee in matters of injury, been governed by a law which peculiarly enough, does not conform to any acceptable definition of law. It does not represent the crystallization of any opinion except the individual opinion of a single English judge. It is the best example I know of, of what might be called, "judge made" law. One always speaks with respect of the court, but when the court has been dead for fifty years or so, perhaps one can venture liberties without danger of being in contempt; and it is not too much to say, that the opinion of the judge, in which he laid down what has been the law of liability since his time, was a parody on logic and a travesty on justice. He gave that ruling at a time when the industrial revolution had almost accomplished itself, when production on a large scale and the factory system had been well established, and he set out by saying that he gave this decision, because of the absurd consequences which would follow from a ruling otherwise; and then, closing his eyes to the whole trend of industry, he based every single argument

upon what would happen in domestic service. He laid down the doctrine that the employee assumed the risk of his employment, and that that risk included the risk of accident from the negligence or the mistake of a fellow-servant. Now it might just as easily have happened that another judge would have decided that the contract for employment involved the idea that the employer guaranteed the employee against accident, and agreed to compensate him, therefore, and if that had been the personal idiosyncrasy of the judge deciding it, it would have been the law to-day. The effort we are making to-day, is an attempt to get away from that hard and fast rule of law which, as I said, in its inception, simply represented the "personal idiosyncrasy" of the particular judge who decided the case. As Berrell has said, "There was read into the assumed contract of employment a clause which employer or employee had never dreamed of, and which neither of them to this day has been able clearly to understand."

As the first step in legislation is the formation of sound public opinion, we may say the progress that has been made in the matter of employers' liability and workmen's compensation is simply phenomenal. I know of no change, no fundamental change, in an existing legal system, which has made the progress within a period of four or five years that this movement has made. If any one had said to us five years ago that within half a decade we should have heard eminent members of the bar, distinguished employers of labor on a large scale, standing up and assailing that law as iniquitous, and clamoring for change, we would probably have said that our prophet ought to be the subject of a writ "*de lunatico inquirendo.*" And yet only the most drastic criticisms of the law that I have yet heard have come, during this meeting, from gentlemen like Mr. Hammond, Mr. Dickson, of the Steel Corporation; and Mr. Schram, of the Brewers' Association, in which they have denounced it as iniquitous and unjust in the last degree.

On most subjects we can say there are two sides—often more. In this question there is only one side. It does not seem to me it is open to discussion. As a distinguished politician was once quoted as having said, "There are some things not open to discussion. If you will take the commandment, 'Thou shalt not steal,' and a man says, 'let us discuss it,' don't discuss it with him—search him." The same thing is true here. When a man sets out to advo-

cate the justice of the present legal system in relation to employers' liability, do not argue with him, investigate and try to find the basis of his hallucination.

After we have converted public opinion, the next step is to set in motion the machinery by which to give formal expression to that public opinion and embody it in formal law. Now the ordinary machinery of giving expression in formal shape to public opinion is legislation. What I want to invite your attention to here—I am not criticising it, I am simply inviting attention—is the basis of our entire system of legislation. In the first place our legislatures are ordinarily slow to act and properly so. They want to be sure that that to which they are giving formal expression and more or less permanent form, really represents the matured and deliberate wishes of the community. We have, therefore, started out and made the legislature, bi-cameral, with two houses, one of which shall be immediately responsible to public sentiment, by having to go back at very short intervals, and stand before the public for re-election; the other we have deliberately removed further, so that it is made less amenable to public sentiment. We have done that deliberately, in order that there might be certain obstacles placed in the way of immediate expression of popular opinion. But we have gone further than that. After that second house, removed, more or less, from the influence of public opinion has passed its judgment, we have then submitted that to the veto power of the governor—again a procedure adopted, and I think properly, in order to make the expression of popular opinion in a formal manner more deliberate and slow-moving. Now, if we ask what progress we have made so far in this phase of the enactment of legislation concerning employers' liability, we can say again, that the progress is most remarkable. At the present time ten different states have, by legislative enactment, appointed commissions to inquire into the subject of existing statutes, and report to the legislatures. Two states have already passed laws, and in two or three other states laws have passed one of the houses. I venture to say, if there were no other obstacles, that within the next ten years, three-fourths of the states would have passed "compensation acts" to replace employers' liability statutes. Our progress in this respect, more so the recent progress, has been remarkable.

The bi-cameral legislature and the government do not repre-

sent the entire machinery of expressing in formal manner the public opinion, and public understandings of right and wrong. We have here, again, given what we may call a power of "veto" to the court. While the governor's veto is restricted in no way—he may veto the law for any reason he pleases—we have given a restricted "veto" to the court. It may only "veto" the law within certain limits, within certain restrictions, which have been clearly defined, and which we all understand. Now, if we ask ourselves, what progress we have made in recent legislation, with reference to employers' liability, so far as this part of the mechanism is concerned, we will have to answer—nothing. We have made no progress. The recent decision of the New York Court of Appeals, a unanimous opinion, indicates that we have not gone any further than where we started from. In fact, we may be said to have gone backwards. We had an idea, a few weeks ago, that we had gotten a good way, only to find we have not gotten anywhere. Our hopes have had a setback, and in a sense we are not as far as when we started out.

Let us consider a moment further. Where does the court get this right of "veto?" It gets it from the constitution, and I want to invite your attention particularly to this fact, that the constitution is nothing more than another form of law. The making of constitutions is also part of the mechanism by which we give formal expression to the public will. Now, what I ask your attention particularly to, is this point, in the constitutional law, that is, in the law most directly enacted by the people themselves, we have placed further checks upon the right to immediately enact our views into the permanent form of law.

In our constitutions we embody those views of right and wrong which we desire enacted into law of more permanent and lasting form than the ordinary legislative enactments; and we have set limits beyond which our legislative bodies are not to go. If they, in their enactments, go beyond the limits fixed by the constitution, they violate, as it were, the law which the people themselves have passed. When a court of such high distinction, and we may assume the court of one of the great states of the Union is a court of high distinction, gives a unanimous decision against the constitutionality of a law, I think even the most reckless of us must assume that the law very likely was unconstitutional. But do not turn around and

attack the court. The court has done exactly what we put it there to do, and we are angry because our carefully devised system has proved so thoroughly effective. Now, that is what we are facing to-day. We have deliberately adopted a system, as I said, to make difficult the putting into operation of any new theories of right and wrong, and then when we attempt to enact into law a thing upon which we are all agreed, and find we have violated our own fundamental law, we grow angry with the courts.

It seems to me we are very much in the position of the dog that runs and bites the stone that struck him. It may be that we are hit, and hard hit, by the decision of the New York Court of Appeals, but the Court of Appeals is merely the stone that struck us. The power that threw the stone is the constitution that the people themselves have adopted.

All this leads up directly to one point. We have heard suggested various methods of how we can get around the constitutional difficulties. It has been suggested that we can adopt state insurance, and by the adoption of the taxing powers establish rules for the public welfare, and defeat the constitution; in other words, that we can do by indirection, what we have forbidden ourselves to do by direction. It has also been suggested that we may take away the employers' defence, and leave the compensation law optional, but this is "optional" in a truly pickwickian sense. He can take it, or pay the penalty. Now, that is no more fair, not more "optional" or free in the accurate or correct sense, than it is to say that the workman has freedom of contract. It is a counterfeit freedom, a mockery, a sham.

I am not going to discuss the merits of state insurance versus private insurance. It may or may not be better. But do not let us be driven into it because we cannot do the other thing. Let us set out to amend our constitutions so that we shall have freedom to choose between systems and adopt the one we think is best. In other words, let us accept frankly the system of legislation we have adopted, and one which, I for one, am not yet willing to abandon. Let us face it squarely, and live under it, and let us start the machinery of legislation, which means legislation by the people themselves, and amend the state constitutions until we have freedom of choice in adopting a reasonable and just system of workmen's compensation; let us have entire freedom to adopt that one which

serious study and frank discussion shall convince us is the right and proper one to adopt. In other words, to repeat, let us accept the constitutional system we have adopted, let us live under it, let us be consistent and logical, and let us set about effecting that kind of legislation in which we have as yet made no progress.

The time is ripe for it. I know of no other subject upon which it is as easy to convince the fair-minded person. I believe that, judging by the experience of the past four years, in the propaganda being carried on, there is no topic on which it would be so easy to convince a person of the injustice of the present system, and no topic on which it would be so easy to secure constitutional amendment, as on the subject of employers' liability and workmen's compensation.

THE SYSTEM BEST ADAPTED TO THE UNITED STATES

BY MILES M. DAWSON,
Counsellor-at-Law and Consulting Actuary, New York.

The best system would obviously be best adapted to the best nation. Though not intending to indulge in boasting, we would be very loath to admit that the United States was not easily first among nations. If there are reasons why the system is objected to, these reasons then must obviously be based upon mere prejudice. Such ought not to stand in the way of its adoption when the facts are fully known; and will not stand in the way if our nation really is the best and its people worthy of it.

Workmen's compensation is at present being presented to the American people in three forms, viz.:

First: In a form merely optional, i. e., contemplating that employers and employees should bring themselves under its provisions (which, except in the Ohio bill, provides for direct liability of the employer, instead of insurance) by their own action, or quasi-optimal, i. e., requiring them, if not desiring to be bound by its provisions, to take affirmative action indicating their election.

A law of the former character was enacted in New York last year, and took effect on September 1st last. It is reported that but one employer has brought himself and his employees within its purview. This, notwithstanding the fact that the defenses against employers' liability have been considerably modified, a fact which is elsewhere expected to cause all employers to seek refuge under the provisions of such an act.

Possibly a law like that which is proposed in Ohio, removing the defences against an action for negligence, but offering a safe haven in state insurance of the compensation type, might bring more employers under the compensation provisions.

Undoubtedly, under a quasi-optimal system, requiring written notice to certain officials to avoid coming under its provisions, a very large proportion would find themselves included within them; but the same reasoning which caused the Court of Appeals of the State of New York to hold that a so-called "compulsory com-

pensation act" is unconstitutional, as taking private property without due process of law, would perhaps apply to any such form, not wholly and in fact optional.

Moreover, it cannot be denied that either an optional or a quasi-optimal workmen's compensation system is but a partial and incomplete solution of the serious problems at which such legislation is directed.

Notwithstanding all this, New Jersey has just had recourse to legislation of this type, and such legislation is in process of enactment in Ohio, with every chance of success and differing from the other only in that state insurance is the option offered. It is also expected that the Wisconsin legislation will take the same form.¹

Second: A law substituting for the present employers' liability law, a system of workmen's compensation, the employer to be liable for the payment of the compensations and the same to be applicable to all employments.

With the exception that it was not made applicable to all employments, but only to certain of them which were selected by reason of the extraordinary peril attending them, and by reason of their not being in competition with similar industries of other states, this is the form which was taken by the so-called "compulsory" workmen's compensation act of New York.

It is now a matter of history that this has been declared unconstitutional by the unanimous opinion of the Court of Appeals. It is declared unconstitutional both under the provisions of the state constitution, and under the provisions of the federal constitution. Against the former determination there is no appeal; and, consequently, so far as New York is concerned, the question is finally disposed of, unless the constitution be amended.²

Should such a system be upheld, it would produce as good results as would an optional system such as the New York or the New Jersey type, if the latter were to be universally accepted.

But this system, even if available, is certainly not the best. In the first place, it involves many uncertainties, both for the employer and for the employees. Thus, had there been such a statute in force and applicable to the manufacturing company upon whose

¹It has, as have also the new laws in New Hampshire and California.

²This has since been recommended by the Commission and a bill has been introduced to submit an amendment to the voters.

premises the frightful holocaust occurred in New York on the very day the decision of the Court of Appeals was announced, it would have resulted, as doubtlessly suits for negligence under the existing law will result, in the ruin of the employer while little, if anything would have been realized for the families of the deceased or for those who were injured.

This illustrates two things, viz.: (a) that it is by no means certain that, under the system of holding the employer directly liable, the burden will be distributed, and thus appear in the price of the products or services to be paid consequently by the consumer; and (b) that it is by no means certain that the compensation will be paid at all. In neither case is the community well served.

In the next place, it is a wasteful system. The only means by which a proper distribution of the costs can be made under it is by private, voluntary insurance. In Great Britain, where such a law is in force without modification, and where the best stock companies in Europe that insure against such risks, are to be found, it costs, roughly, a shilling for expenses to get a shilling of benefits to the dependents of the deceased workmen and to those who are injured. It costs no less than 30 per cent of the entire sum disbursed in benefits merely to pay agents for soliciting the patronage of employers; and this does not include the costs of superintendence.

If an adequate system of this type were introduced throughout the United States, giving benefits as large as, for instance, in Germany, I estimate that it would cost, net, about \$400,000,000 per annum, to pay the compensation after the plan was in full swing.

If the expense were 100 per cent, as in Great Britain, this would mean \$400,000,000 added to the net cost. Of this vast sum at least \$120,000,000 would be paid for the services of solicitors—an army of agents, yet to be drawn from other occupations and put into this.

These figures may look large; but it was estimated several years ago from the official returns, that the commissions to fire insurance agents in the United States were no less than \$115,000,000; and it is safe to say that under an adequate system of workmen's compensation, covered only by private insurance, the premiums would aggregate a greater sum than is paid for fire insurance. The amount paid in commissions would be at least as large, and the amount paid in total expenses would be considerably larger.

Moreover, there is virtually an irresistible tendency, when the employer is held directly liable, to impair the effectiveness and value of the compensation system itself.

Thus all such bills offered in the United States so far, have provided for limiting the payment of benefits to cases of total disability, or to widows and orphans, for a certain number of years, thus leaving all those who live beyond that period unprovided for.

In no other country, not even in those which have adopted legislation of this type, has such cowardice been exhibited. In our own, it has not been exhibited as will be seen, in the state insurance law, just enacted in the state of Washington.

There are two things which have caused this action to be taken, viz.: The objection that an employer does not wish to be placed in a position where he will be liable to furnish a permanent income to the injured individual or his dependents. It is put thus: "It must stop, somewhere." In the next place, the private insurance companies have, to my knowledge, urged that they could not well figure what it would cost on this basis. This is true in a sense, although such costs may be estimated from foreign statistics, within a reasonable range.

Even when, as in Great Britain, there is a provision that at least the benefits for permanent disability must be paid during the continuance of the disability, it is found in practice that every loophole in the statute which will permit compromise is promptly availed of. This is well illustrated by the very small reserve which British companies are required to hold in order to take care of such deferred liabilities and perhaps even better by this criticism which recently appeared in a prominent British insurance paper, operated also as a journal in the interest of the companies:

We must say, that if anything is likely to provoke the State to start compensation insurance, it is the action of many offices in "bluffing" claimants into unjust settlements. Almost every day we notice in some part of the country the intervention of the County Court to prevent the registration of some agreement which is manifestly unfair To-day they often trade upon the ignorance of claimants when they should be collecting higher premium rates. This naturally arouses the anger of all right minded persons and it certainly gives those members of the community who are inclined towards socialism an opportunity to plead for the nationalization of all the means of production, distribution and exchange. If the insurance offices serve the public well they have nothing to fear, but shaving claims to swell dividend returns is not good service.

This editorial was based upon the following statement concerning the decision of a British judge:

Judge Emden said that he did not approve at all of those lump sums. They were getting far too frequent. He believed that he was correct in saying that now the larger portion of the work under the Workmen's Compensation Act was being transacted under agreements of that character and the object of the act was being defeated. If the case before him was, as was alleged, an improper case to bring, it was not a case for an agreement at all, and ought to be dismissed. If it was a proper case, then an agreement was not the right way to dispose of it, and he did not think the workman would be properly protected unless the matter came before the court. He had been watching those cases for some time, and his conclusion, based upon investigation, was that the whole beneficial effect of the act was being defeated.

Mr. Hurd said if the payment of lump sums under agreements were abolished there ought to be some central authority to say when a man should return to work.

Judge Emden—That is equivalent to saying the act cannot be worked in its present way satisfactorily.

His Honor declined to accede to the application, remarking that agreements of that kind were increasing to such an extent that he must do all he could to stop him.

When the payments are commuted in this manner, the ultimate result must be that one of the chief purposes of such legislation, viz.: that these unfortunates be provided an income, will be defeated; and it is to be expected in consequence that they will soon be dependent on public or private charity, precisely as if no such plan had been introduced.

As much is indicated, likewise, by the reports of the committee sent by the Trades Congress of Great Britain to study the German situation, which said, among other things, that it was observable that in Germany there were literally no slums—a fact sharply in contrast with the conditions in Great Britain under its exceptionally liberal compensation act.

Third: A system of compulsory insurance in which the state lends its sovereign power to afford at least the compulsion and in which it either may or may not also assume the management and conduct of the business.

Many critics have regarded this as peculiarly un-American; but the interesting thing about it is that it was regarded as quite as

peculiarly un-German, un-Norwegian, un-Gallican, and, so late as three years ago, un-British, and on precisely the same ground, viz.: that "ours is a free people and will not endure compulsion."

Yet the system has now been in use in Germany for twenty-five years, and is so thoroughly satisfactory, both to employers and employees, that nothing would induce them to change. It has also been in force in Austria for nearly as long a period, a country where they have the mixed population problem as in the United States, and in a more aggravated form. The satisfaction with the system has been such that the joint kingdom of Hungary has, after waiting over twenty years also introduced compulsory insurance. In Norway, which has the reputation of being, next to Switzerland, the most democratic country in Europe, it has been so popular likewise that compulsory sickness insurance, recently introduced, is now also generally acceptable. In France, after two decades of resistance and even ten years' experience with a law holding the employer directly responsible, compulsion has been accepted in connection with an invalidity and pension fund plan. And in Great Britain, there is virtually no outcry on the part of either employers or employees, against the proposals of the present government to introduce compulsory insurance against invalidity and also against unemployment.

In our own country, even before the present agitation got under way, the employers and employees who were engaged in coal mining in certain counties in Maryland, were so much in earnest about the matter that after passing one compulsory insurance act, which was declared unconstitutional, they secured another to obviate the constitutional difficulties; and the legislature of Montana, with the approval of the owners of coal mines there as well as of the miners, adopted a similar plan for that state.

At the present time, plans of state insurance, either compulsory or optional or quasi-compulsory, are before the legislatures of several states, including Michigan, Ohio and Texas, and already a compulsory state insurance plan, applying to nearly all employments, has been enacted into law in the state of Washington.

It does not appear, therefore, that when the subject is fully understood, there is any insuperable prejudice against state insurance, if it will produce the best result for the least expenditure of money. It must be admitted that state insurance is effectual. It

really does accomplish what it sets out to accomplish. It has everywhere been conducted economically, whether the management be kept in the hands of the state or in the hands of the employers or of employers and employees together. Thus, the expense in Norway, Austria and Germany is in no case more than 16 per cent of the net costs,³ as compared with 100 per cent in stock companies in Great Britain.

In Germany, the management as to permanent disability, widows' and children's benefits is in the hands of mutual associations of employers and the benefits of the first thirteen weeks, in the hands of sickness insurance associations in which the employees elect two-thirds of the trustees and the employers one-third, and it has been found that the cost of management is even a little less than elsewhere, the employers' associations being at about the same rate as elsewhere, but the sickness insurance associations at a cost of about 8 per cent.

In the matter of prevention it is everywhere acknowledged that the system in use in Germany is by far the most effectual, the employers imposing upon themselves rules for avoiding accidents to which they would probably never submit, were they imposed by the government or by a private insurance company.

That this is true, and that it may greatly reduce the hazard is sufficiently shown by the experience of the factory mutuals in the United States in fire insurance, which have so greatly reduced the hazards that the cost of insurance is frequently one-tenth of one per cent per annum or less, whereas it used to be from 2 per cent to as high as 5 per cent or higher.

There is also no objection under such a system to affording permanent benefits; and the state is interested, not in having compromises made, which will save a dollar here or there for the funds, but in having the benefits so paid as to support all dependents. The Washington law so provides, both as to disability benefits and benefits to widows and orphans.

Another very great advantage, especially in introducing such a plan, may also be realized by adopting the assessment system as in Germany, and more recently in Hungary, under which no more is collected currently than is currently required to meet claims.

This would not be safe under a voluntary system, but under a

³Including prevention, adjustments and litigation.

compulsory system there is, of course, no more reason that the government should collect more of these taxes than are currently required, than that it should collect more taxes for any other purpose than are currently required.

Under such a system, therefore, the cost at the outset would not be more than the premiums employers are paying at present; and the increase would be so gradual that at least twenty-five years would elapse before anything like a maximum would be reached, which maximum, likewise, would obviously still be very much less than under any system of private insurance.

Under such a system, also, of course, no employer could be ruined, and thereby no dependents deprived of their benefits.

The question is raised immediately as to whether such legislation will be constitutional. Sufficient time is not allotted me to undertake a discussion of this question. It has, however, from the beginning seemed to me that laws of this character have a much better chance of being declared constitutional than any other laws, excepting possibly those which are purely optional, and among such I hesitate to include the quasi-optimal, which require choice to be made in order to remain under the negligence laws.

This view I had formed prior to 1909, after consulting all the decisions available. It has recently been strongly confirmed by the reasoning of the Court of Appeals of New York in declaring the workmen's compensation act unconstitutional, and by the decision of the Supreme Court of the United States in the Oklahoma bank guaranty cases.

One result, also, of the limited research which I have been able to make in the matter is to indicate that there is even greater probability that a proper *national* act of this form would be declared constitutional than there is that similar acts of the legislatures of the different states would be so declared. The national constitution is in this respect broader as to the taxing power than the constitutions of most of the states.⁴

It is peculiarly desirable, likewise, in view of the absolutely free trade among the states that, if possible, this legislation be national, in order that there may be no discrimination against the industries of one state in favor of those in another. The variation

⁴This view is strongly confirmed by an exhaustive examination of authorities since completed.

in rates for employer's liability insurance is now three to one or even four to one, as between industries otherwise alike but in different states. This should be remedied, not aggravated.

If, therefore, the question, "What system of workmen's compensation is best adapted to the United States?" is to be answered, as if it read, "What system is best for the people of the United States?" there is but one answer possible.

If, on the contrary, it is, "What system of workmen's compensation is most likely to be adopted, taking into account certain prejudices alleged to exist in the United States?" it may be that the answer would be different. Even of that, I am not convinced; for I do not believe that American employers, employees or our citizens in general, are in favor of doing this thing in a way which is certain to be the least effectual and at the same time the most expensive.

POINTS TO BE CONSIDERED IN WORKMEN'S COMPENSATION LEGISLATION

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In this brief paper, I shall emphasize some points that law-makers must consider in attempting to change the basis for dealing with industrial accidents.

First, comes the change in public opinion towards them, and the reason for it. In 1905, when ten years' management of innumerable accidents here, drove me over to England to investigate the workings of the English Compensation Act of 1897, in the hope of finding a way out of the grave abuses that resulted from the continued regulation of them by the law of negligence, the question in the United States was then, (if there was any,) "is any change necessary?" Now, after free discussion and consideration of the conditions and abuses that necessarily surround the application of the law of negligence to modern industrial conditions, the question has become "What kind of a change is necessary?"

One speaks of the change that has taken place in industrial conditions since the common law of negligence was first adopted as the basis of treatment of accidents of industry.

To get this forcibly before us, let us stop for a moment and read a short accurate description of those early conditions that first led judges to apply the common law of negligence to industrial accidents, and then contrast them with conditions of industry to-day. It is conceivable that then, little injustice resulted from such application, and perhaps some reason then existed for asking, "Who has been negligent?" when an accident occurred. There is, no doubt, too, that then, if an accident with resulting hardship occurred, it was dealt with entirely without any recourse to law at all; early decisions as to such actions in the law books prior to 1841 are strangely lacking; now the books are crowded with them. The description I read from was written years ago by one who has since attained

literary distinction, but who herself was actually a worker in the mills at the time she describes:

"Lowell, in 1832, was a factory village in which five corporations were started and were building cotton mills. Stories were being told all over the country of the new factory-place and of the high wages offered. Stage coaches, canal boats, large covered baggage wagons, brought mechanics and machinists with their home-made chests of tools. The stage coach could not fetch and carry fast enough, and in 1835 the Boston and Lowell Railroad, almost the first enterprise of this kind in the United States, went into operation. Daughters of professional men, teachers, and of farmers, with others, comprised the operatives, whose incentive to labor was often to give a college education to a son or brother.

The conditions of work were easy; frequently a girl would sit and rest twenty or thirty minutes at a time; they were not driven: the mule and the spinning-jenny had not been introduced, and two or three looms were as much as one girl was required to attend.

There was a feeling of respectful equality between employers and the employees, who were often invited to their houses."

When the changed industrial conditions of to-day are realized, the necessity for change in law becomes apparent to the legislator.

Throughout the country, change is still being attempted by an endeavor to patch up the old law of negligence and make it fit the new conditions of industry. This attempt must fail; it is only putting new wine into old bottles.

The alternative to negligence law is a so-called compensation law, and the question for the law-maker, therefore, becomes "What kind of compensation law?"

To determine this, the aid of the economist to supply the facts is necessary. In America there is less reason to warn against the economist who reasons on theoretical grounds, such as the universal economic law—the natural law, than there was in Germany. Even in Germany their economists finally conceded that the question was not to be dealt with on theoretical rules of economy or natural law, but that economic doctrine must wait upon facts and be determined by the facts. What America wants from the economist is realistic political economy, based upon statistical material, and not deductions from rigid theoretical premise. The law-maker, therefore, must first endeavor to secure the facts concerning accidents in the indus-

tries he deals with, and even though he cannot secure all he needs, he can secure sufficient to guide him.

The law-maker must next realize that practically all of the existing evils to-day that surround the treatment of industrial accidents on the negligence basis, are traceable to the one word, "uncertainty."

That uncertainty presents itself in a double aspect; "uncertainty as to the responsibility" for the accident when it happens—and second, "uncertainty as to the medical or surgical facts."

As a direct result of these two uncertainties, we find great hardship upon the employee, and great hardship upon the employer. As the employee does not know whether his employer is responsible to him or not, the lawyer becomes necessary to get rid of this uncertainty. The employer soon learns that the employee has called in a lawyer, and the antagonism created by law between them becomes acute; expense for the lawyer is involved, examination of the facts surrounding the accident must be made, testimony of witnesses taken and, possibly after long delays, ultimate trial in court must be had to determine the responsibility. The employer is in exactly the same position, he must have every accident investigated, he must consequently engage a lawyer, and also take testimony of witnesses and be prepared to fight a suit at law to get rid of his uncertainty, in every accident; sometimes these unpleasant duties are transferred by the employer to an insurance company.

If one stops a moment to consider the thousands of accidents happening in the United States in a single year, it will be unnecessary to emphasize the shocking waste of energy, brains and money in getting rid of the mere uncertainty "as to whether the employer is responsible or not."

"Uncertainty as to the medical facts" is also as important as a factor conducing to disagreement, as is uncertainty of responsibility. The employee has no medical attention provided for him by an employer, who "perhaps" owes him nothing. Every lawyer who has tried personal injury cases is familiar with the universal doubt as to how much the man is incapacitated, "the disagreement of doctors" being an expensive uncertainty. Many a settlement would be made by employers if they knew that the man was injured to the extent that he claims he is: many a settlement now made would be refused by the employee if he realized "how permanent" his injury was.

Law-makers must, therefore, fix a system of absolute responsibility before the accident happens; and also devise a system of ascertaining quickly and definitely the medical facts—a compensation law would only accentuate the necessity for the latter, if they wish to obviate the glaring disadvantages of the present system.

So far as one can judge of the present attitude toward this subject throughout this country to-day, it would seem clear that both employers and employees are agreed generally, in favor of discarding the system that requires proof of negligence and substituting a fixed and definite responsibility for an accident before it happens, and a system for quick determination of the extent of the injury to the injured after the accident happens.

If this be true it would seem that the ground underlying any controversy on the subject between the employer and employee is narrowed to one word, "expense." What amount of expense will the industry stand. What amount of expense will enable adequate compensation under a compensation law to be paid.

All of you here familiar with insurance know that the cost of selling insurance to-day is high. That the cost of investigation of accident is high. That much of the abuse directed against the insurance companies, is from those who fail to recognize that they are helpless to change the present ambulance, lawyer, and claim agent system, which is based upon the fact that the law makes the interest of the employee and employer antagonistic directly an accident happens, through the uncertainty of their rights and obligations.

When all abuse is put on one side, the fact remains that by removing the necessity for legally investigating every accident and preparing to fight it in the courts if suit be brought, and by enabling the extent of the injury to be determined with certainty and quickly, and also by getting rid of, as far as possible, the waste of competitive selling, a large part of the expense of insurance would be removed.

Uncertainty produces expense. The "uncertainty" in the New York Compensation Law was largely responsible for the high rate of insurance fixed under it.

If both a compensation law remedy and the present negligence law remedy be left side by side, or as alternatives, uncertainty results. Each accident being a potential suit producer, all the existing abuses must continue; the same necessity will exist for investigating every accident, the same activities of lawyers and much of

the same negligence law expense will continue, with the addition of the expense for a compensation law. A few years ago, I had occasion to secure from a leading insurance company an estimate of the cost of a suggested Massachusetts workman's compensation bill. The bill left the existing negligence remedy as an alternative. After computing the cost of the compensation bill, the insurance company simply added to that cost the full price it was then charging for insurance against the existing negligence remedy. The result will be that employees' allowances under the compensation law will be reduced in amount, if a double or alternative remedy be left side by side with it.

The fact that the expense to the employer involved under any compensation law depends entirely upon the conditions in that law, proves that estimates in advance of the drafting of the law are of no value. Both parties in their attempt to reach an agreement should remember that the expense exists at the opposite ends of the disablements, so to speak. A very heavy part of that expense arises from the innumerable short-term injuries that last only a few weeks. If these be cut out the expense is reduced. Another heavy part of the expense results from the long-term permanent disablements, namely, those disablements that last during life. It is important to the law-maker to know at which end, employer and employee desire to have their expense reduced if they wish to increase the amount of benefits. Should injuries that are trivial be excluded; should permanent injuries only be compensated for a limited period, allowing the injured to fall back upon his family or public charity at the end of that period, or should they be continued during his life?

The extent to which prevention of accident will result from a compensation law will also affect the expense. I have recently made inquiries on this point of government inspectors and of employers and employees' organizations in England, where the statistics show an increase in the short-term injuries since the compensation laws went into effect, and where a special committee has been appointed to inquire whether any actual increase of accidents had occurred, and if so, the cause of it. The result of inquiry showed that causes other than the compensation law had tended to increase accidents; that the compensation law by making a definite expense follow every accident had tended to reduce accidents; that the statistical increase was largely due to fuller reporting of the

accidents that occurred. So the history of compensation laws continues to be, as it was stated to be by the Premier who passed the bill in England, "the history of a great machinery for saving human life."

The new basis of the law incident to employment and resulting accident, is in reality a reversion to the old form of absolute liability for the acts of a servant, and this brings me to the final matter which is a difficulty of the law-maker's work, namely, that of producing a law which will constitutionally accomplish the objects above enumerated. We must wait until the Supreme Courts of other states besides the one in New York have expressed their views, before coming to a conclusion as to the constitutionality of compensation laws. I believe an opposite result may be reached by other states and a basis for constitutional enactment be found in the fact that "he, who for his own profit starts a dangerous force in motion may be held responsible for the injury it causes to others."

The legislators may be enabled to constitutionally adjust the law to the social policy of to-day, as legal history teaches us it has hitherto done. And as Dean John H. Wigmore, in his History of Tortious Responsibility suggests, possibly the satisfying of the demands of public convenience may find justification both theoretically and historically in the employment of a substitute more or less "at peril." I attach herewith my

PRELIMINARY BRIEF ON THE POWER OF CONGRESS TO
IMPOSE AN ABSOLUTE LIABILITY IRRESPECTIVE
OF NEGLIGENCE UPON AN EMPLOYER, FOR
ACCIDENTS TO HIS EMPLOYEES IN
HIS BUSINESS.

Is imposing an absolute liability upon an employer irrespective of his negligence, for all accidents to his employees, which occur during, and arise out of, their occupation, within the inhibition of Art. 5 of the Amendments to the Constitution "that no person shall be deprived of his life, liberty or property without due process of law."

18 How. 272 "Due process of Law," has been held in *Murray v. Hoboken Land Company* to be synonymous with, "the law of the land" in Magna Charta—which is a statute declaratory of principles of the common law (Cooley's Constitutional Limitations.)

There is no departure from the theory of law in legal recogni-

tion of substitutive rights and liabilities developed by changes in conditions, (the law contemplates change as conditions change—otherwise common law rights would still be restricted to those in the Writs of Westminster Hall.)

110 U. S. at

530

Hurtado

v.

Cal.

In *Hurtado v. California* 110 U. S. at 530, Mr. Justice Matthews said: "The flexibility and capacity for growth and adaptation, is the peculiar boast and excellence of the Common Law. . . . The Constitution of the United States was ordained, it is true, by descendants of Englishmen who inherited the traditions of English Law and History; but it was made for an undefined and expanding future. . . .

There is nothing in Magna Charta rightly construed as a broad charter of public right and law, which ought to exclude the best ideas of all systems and every age. In this country . . . the provisions of Magna Charta were incorporated into Bills of Rights. . . .

. . . here they have become bulwarks against arbitrary legislation; but in that application, as it would be incongruous to measure and restrict them by the ancient customary English Law, they must be held to guarantee, etc.; and in commenting upon the test of what constitutes due process of law, advanced in *Murray v. Hoboken Land Co.* 18 How. 272, which said "We must look to those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors which are shown not to have been unsuited to their civil condition by having been acted on by them after the settlement of this country," and upon the inference therefrom, "that any proceeding not thus sanctioned by usage cannot be regarded as due process of law," Mr. Justice Matthews says at p. 582 "This inference" is unwarranted. The real syllabus of the passage quoted is, that a process of law, which is not otherwise forbidden must be taken to be due process of law, if it can show the sanction of settled usage both in England and in this country, *but it by no means follows that nothing else can be due process of law*. But to hold such a characteristic is essential—would be to deny every quality of the law but its age, and to render it incapable of progress or improvement. It would be to stamp upon our jurisprudence

169 U. S. 366

Holden

v.

Hardy

198 U. S. 45

the unchangeableness attributed to the laws of the Medes and Persians."

The opinion in *Holden v. Hardy* says: "The Supreme Court has not failed to recognize the fact that the law is, to a certain extent, a progressive science—(and gives instances of such progress)."

Mr. Justice Holmes after referring to that case, in 198 U. S. 45, says: "Liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion."

219 U. S. 104

And again in 219 U. S. 104 he says, in speaking of the great guarantees of the Bill of Rights (the police power), "judges should be slow to read into the latter *nolumus mutare* as against the law making power."

16 Wall. at 525

Steamboat Co.

v.

Chase

92 U. S. 102.

Sherlock

v.

Alling.

In *Steamboat Co. v. Chase*, 16 Wall. at 525 (1872) in a note to text, it is pointed out that actions for damage for loss of life were unknown until 1846, Lord Campbell's Act. Yet by statute American Jurisprudence has created such a liability for death. See *Sherlock v. Alling* 93 U. S. where it says at 102, by common law, right of action for personal torts dies with person injured, the statute which allows action when resulting in death "enlarges the liability of parties for such torts."

If examination shows that in England, when so doing was considered to subserve the ideas of social policy of the time, settled usage held a man absolutely liable irrespective of negligence for acts that eventuated in harm; that of itself will be evidence strongly indicative of the freedom from any inhibition, by the fifth amendment, against imposing an absolute liability. Moreover if it be shown that such an absolute liability has, in the subsequent successive adjustments of the law to social policy, been continued, for certain classes of such acts, to the time of the emigration of our ancestors, and further has been acted upon by them after settlement of this country, the freedom of Congress in relation thereto would be conclusively established—without further inquiry into whether owing to changed conditions of industry other justification of such freedom of Congress exists (outside of such usage in England and this country).

The history of responsibility for tortious acts has been examined into by legal writers, and the courts have dealt with it.

John H. Wigmore's history of Tortious Acts is a critical historical examination which shows that the common law has always known an absolute liability, irrespective of negligence and shows that a primitive absolute liability for harm existed which was universal in all races.

A manifestation of this was the liability of a master to his servant's relatives for his death, even accidental, where the business has been the occasion of the evil. L. L. Hy. I:90 (Brunner Deutsche R.) a person was considered the "causa mortis" who sent another person away on his business, if that other lost his life executing the order; an accident was imputed to, the master as homicide, if his servant lost his life by misadventure, by reason of a tree or of fire, etc.

The state of the law towards harms caused by personal deeds, by animals, by inanimate things, or by servants or slaves are shown to have passed through similar successive stages.

First the primitive absolute liability for them (liability being visited—on the visible offending source of the visible evil result.)

For personal deeds, in the next stage, misadventure becomes a ground for appeal to the King to remit the punishment due, killing in self defence even requiring pardon by the King (Bracton mentions a case of pardon in 1234 of a man who defended himself against a burglar in his own house). In the next stage the fine is reduced (Laws of Henry I "when result not intention is blamable, judge must fix a small fine as really accident.") Finally, complete exculpation in the criminal process, if immediate notice is given and an oath taken as to "accident" or "self defence," though, in homicide at least, the slayer pays a fine to the King for the crime—and probably for all torts some compensation to the injured, in England in the 13th century.

As to animals—first the full absolute liability. Then the owner was still liable for the *wergeld* for harm done unintentionally,—but was released from the blood feud. Then exculpation, by delivery up of the animal (at first for private vengeance and later for public punishment) often accompanied by oath "that the owner was not aware of the animal's vice." Laws of Alfred (871-901). "If a neat wound a man let the neat be delivered up or compounded for." Fitzherbert (1333). "If my dog kills your sheep, and I freshly after the fact tender you the dog, you are without recovery against me."

Inanimate things: First the absolute liability. Then the forfeiture—as in the case of *Deodand*: (the idea of forfeiture is illustrated in a case quoted in Holmes' Common Law. "If my horse strikes a man and the man dies the horse shall be forfeited.") Sometimes with exculpation by oath—(Laws of Henry I "If a man put down his arms, and another does harm with them, the owner must free himself by oath"); finally a foreshadowing of the test of due care or the like.—(as under the laws of Alfred, liability exists if an injury is caused by a spear held with point three inches higher than end of shaft, otherwise none).

As to harms connected with a servant: At first here too was absolute liability of the master, later modified by surrender at first to the injured families, then to the courts for justice—(Laws of William I, C 52. "All who have servants are to be their pledges—and must have servant before The Hundred, for trial—if he flees master shall pay"). The exculpatory oath denying connivance with deed, avoided criminal, but not civil, liability. And by the 13th Century appears the test of responsibility, soon after extended to the civil liability of "command or consent" . . . "Bracton's Note-Book" (1233): case in which *disseisin* justified, "because he did not sanction the deed, nor did any one lay it before him."

It is seen from the foregoing that "absolute liability for harm, irrespective of negligence," was imposed by early law, not only in England, but in other countries. In following on the developments of the law in England is shown a constant adjustment to the prevailing notions of the time by the tests of responsibility adopted in the judges' decisions, and it can hardly be urged with reason that such adjustment is rendered impossible now by words

adopted in our Constitution from Magna Charta, which was operative in England when such adjustment was there so made. Thus in 1200, as the author points out, for harm done unintentionally and personally, no distinction was yet made as to negligence; an act was then either "intentional," or "unintentional"; and that this fitted the prevailing ethical notions of that time.

In 1500 came a sloughing off, of the primitive notion that a voluntary act causing harm was inevitably followed by civil responsibility, and a defendant might defend himself by appeal to some standard of moral blame or fault—such as "inevitable necessity"—America recognized that the precedents involved this in 1835 (see *Brown v. Kendall*, 6 *Cush.* 292, quoting *Vincent v. Stinehour*), but it was not settled in England until 1875, *Holmes v. Mather* (there it is not always a defence).

As regards self defence: It is shown that though in Crown cases in 1278, pardon was only granted by King's favor, by 1400 in civil cases it was a complete defence (14 H. VI. pl. 72).

Infants and lunatics: Are still held civilly liable as late as 1611 (Bacon's Maxims VII) on ground that intent was immaterial.

As to Fires: Absolute responsibility in its strictest form continued until the legislature abolished responsibility for accidental fires in houses in 1712 (see *Tuberville v. Stamp*—1698).

As to animals: A liability existed—for biting and wounding—(excused by oath if vice unknown, except where animal naturally vicious, *Macon v. Keeling*. 1 Mod. 332, 1700)—for land trespass—the old absolute liability remained (except for cattle driven along the highway, the dog also being an exception. Doc. and Stud. 1718.)

Other classes of Acts. These are shown to have been affected by the principles—of liability, if act unlawful, for consequential damage (Scott & Shepherd 2 Wm. Bl. S. 93)—of doctrine, *sic utere tuo ut alienum non laedas*—of absence of right of action for, mere nonfeasance; so that "the action on the case for a mere negligent doing was of little consequence until the 1800's.

By 1866 some of these other classes of acts, were
Rylands grouped, under a phrase "at peril" old in the law, in
 v. a general category of classes of acts at peril (which
Fletcher. gathered in, the other cases of absolute liability) by
 Mr. Justice Blackburn, in *Rylands v. Fletcher* L. R. I.

Exch. at 282, which imposed an absolute liability irrespective of negligence. The author points out that all American Courts have adopted consciously or unconsciously the principle of *Rylands v. Fletcher*, which furnished four main categories,—acts done wilfully,—at peril,—negligently,—and non-negligently,—with reference to that harm, though some have reduced its application to narrow limits.

The development of responsibility for harm done by servants and other agents—shows that in one specific case, i. e. for fire, the old strict absolute liability of the master continued through the 1600's (*Tuberville v. Stamp* I Ld.

Raymond 264 1698) though the "command or consent" test of responsibility had in other cases made way against his absolute civil responsibility, which test between 1700 and 1800 developed into an "implied command from a general command or authority."

This later test is shown to be an adaptation by the Court decisions, of the expediency required by change in conditions of industry and commerce (and the judges being content with "the policy of the rule" took refuge in the phrases—*qui facit per alium facit per se*, and *respondiat superior*). That test gave way to the present "scope of employment" test, and so illustrates a conscious effort to adjust the rules of laws to the expediency of mercantile affairs.—The author suggests that both theoretically and historically, the employment of a substitute "more or less at peril" may be demanded by public convenience.

**Current
English Law
Pollock 7.**

A leading writer on the subject of torts in England, Pollock, makes a group of wrongs, consisting of breaches of "absolute duties" attached to—fixed property—to certain public callings—and to custody and ownership of dangerous things, liability for which, results "partly from ancient rules of the common law and partly from the modern development of the law of negligence." He suggests reasons for the stringent liability in *Rylands v. Fletcher*, requiring a man to bring water on to his land "at his own risk" (p. 18 viz., "whether to avoid the difficulty of proving negligence, or only to sharpen men's precaution in hazardous matters," and for a similar liability for carriers and innkeepers ("a very ancient part of our law") : viz., "whatever the original reason as a matter of history it was quite unlike the 'reasons of policy,' governing the modern class of cases of which *Rylands v. Fletcher* is a type and leading authority and which must defend them as a part of, modern law if they can be defended at all." In discussing the cases where a strict duty has been imposed he says (p. 598) they have been consolidated by modern

**Rylands
v.
Fletcher.**

authorities on the ground of "the magnitude of danger" and the "difficulty of proving negligence," and adds that as laying down a positive rule of law "the decision of *Rylands v. Fletcher* is not open to criticism in England." It, he says, is based in part on evidently hazardous character of the state of things artificially maintained, in part assimilated to a nuisance, in part to old theory that a lawful voluntary act is "*prima facie* done at peril," which modern authorities do not encourage in England and have explicitly rejected in America (citing Nitroglycerine Case (1872)—15 Wall. 524, and *Brown v. Kendall* (1850)—6 Cushing 272).

**Other Cases of
Absolute
Responsibility.**

Among other cases of absolute, or all but absolute responsibility are cited—Cattle trespass: Owner bound to keep from straying "at his peril"; (an old and well settled head)—Owners of dangerous animals: liable for mischief without proof of negligence—Fire, firearms and noxious fluids: No English case (not a recognized exception) where "unsuccessful diligence held to exonerate"; Duty of keeping fire; "custom

of the realm must safely keep his fire" (author doubts whether negligence the gist of the action) : Locomotives: late decisions, one who brings fire into dangerous proximity to his neighbor's property as engines on a railway, without express statutory authority (rule in case cited is expressly stated to be application of principle of *Rylands v. Fletcher*)—or a traction engine in a highway, does so "at his peril" (author doubts the historical foundation of the doctrine) : Firearms: says *Dixon v. Bell* (5 M. & S. 198) decision amounts to, "only caution adequate in law is to abolish its dangerous character altogether":

Explosives: bound to notify danger in sending to a carrier, otherwise liable for damage, etc.—

Acts at Peril.

**Inevitable
Accident.**

For inevitable accident, from a lawful act done in a careful manner, after examination of the cases, he says that under the older authorities, a man acts at his peril and is liable for the consequence of his voluntary acts: Whereas modern law supports the view that inevitable accident is not a ground of liability.

**Holmes
Common Law**

due to negligence."

He examines the precedents in early cases, which apparently held an absolute liability for trespass, and suggests there are strong grounds for believing the decisions were founded on opinion that there was blame, and that consequently the common law has never known "the rule that a man acts at his peril," although he admits that it has been adopted by some of the greatest common law authorities. He calls attention to weighty decisions adverse to it and says that if such later cases are, however, innovations upon it, the *change was politic*.

**Beven on
Negligence.**

Beven examines the English cases and also the American decisions. He says of the two views, each view expresses an aspect of the true view, which is a combination of both.

After review of the cases he says it appears—that in not one of the cases cited is the rule that a man acts at his peril borne out in all its unqualified breadth. On the other hand, those cited in support of the laxer view are not inconsistent with those vouched for the more stringent.

He criticises the view of Justice Holmes that the doer of a lawful act is not liable in trespass. Beven's view is that Lawful Acts must be distinguished into:

1. Those absolute and obligatory duties—like the jailor's in *Bessey v. Olliot*.
2. Exercise of legal right, lawful so long as do not interfere with others—*i.e.*, beating a dog in street for a previous fight—and
3. Things done under inducement to act,—separating his own dog fight-

ing (*Brown v. Kendall Case*)—"Trespassers to save life" on railway lines, who may recover, (as a duty which everyone owes to society). In other words, where action is more beneficial to the community than inaction, the law protects reasonably careful action with immunity.

He concludes that the law of England is settled by *Rylands v. Fletcher*; and is not that a man in all circumstances be "on the alert to avoid receiving injury," as would result from *Stanley v. Powell* being held good law.

**Sher. & Rel.
on
Negligence.** In this work (note to s. 486 *et seq.*) in speaking of the duty of carriers is said: "the obligation of carriers of goods is absolute, their liability does not depend upon their being negligent."

NITROGLYCERINE CASE.

(15 Wallace 524—1872.)

After discussion of the general ignorance of this newly discovered substance on page 529, Mr. Justice Field on page 535 says: the lower court found that neither the defendant, nor any of their employees knew the contents of the case, or had any reason to suspect its dangerous character, and that they did not know anything about nitroglycerine, or that it was dangerous, and that there was no negligence in receiving the case, or in their failure to ascertain the dangerous character of the contents and in the handling of the case.

He says: "No one is responsible for injuries resulting from unavoidable accidents whilst engaged in a lawful business." After distinguishing the cases between passengers and carriers, for injuries, on the ground of "contract to carry safely," he says "here the case stands as one of unavoidable accident, for the consequences of which the defendants are not responsible. The consequences of all such accidents must be borne by the sufferers as his misfortune."

He says this principle is recognized and affirmed in a great variety of cases—fire originating in one man's building extending to the property of others; injuries caused by fire ignited by sparks from locomotives; or caused by horses running away; or by blasting rocks.

The rule deducible is that the measure of care against accident, to avoid responsibility, is that which a person of ordinary prudence would use. He goes on to say the direct or remote consequences may determine the form of the action, whether case or trespass, but cannot alter the principle upon which liability is enforced or predicated. He cites *Brown v. Kendall* 6 Cushing 295, (action was in trespass) and says that Chief Justice Shaw held defendant was doing a lawful act, and if while using due care injury occurred, defendant was not liable. He cites *Harvey v. Dunlap* Lalor's Reports 193, (action was trespass for throwing stone at plaintiff's daughter by which eye put out—it was accidental and was held plaintiff could not recover): He quotes Mr. Justice Nelson's remarks "No case of principle can be found, or if found can be maintained, subjecting an individual to liability for an act done without fault on his part,"—and adds "in this conclusion we all agree."

BROWN *v.* KENDALL.

(6 Cushing 292—1850.)

Facts: two dogs fighting in presence of masters; defendant took stick to separate them; plaintiff was looking on; stick accidentally hit plaintiff in the eye inflicting severe injury. Shaw C. J. "This is an action of trespass. . . . Facts preclude the supposition blow was intentional . . . damage was unintentional. The result of all the authorities is; that plaintiff must come prepared to show either that the intention was unlawful, or that the defendant was in fault. If then using due care he accidentally hit the plaintiff in the eye, this was result of pure accident, or involuntary or unavoidable, therefore the action would not lie."

A DIFFERENT VIEW OF THE COMMON LAW LIABILITY IS FOUND IN DECISIONS
OF CERTAIN OF THE STATES.

This is illustrated in 60th Ohio State 560, Brad Glycerin Co. *v.* St. Mary Mfg. Co., the Syllabus (which is in Ohio made the law) says "Nitroglycerin is highly dangerous. And one who stores it on his own premises is liable for injuries to surrounding property by its explosion, although he neither violates any provision of the law regulating its storage, nor is chargeable with negligence contributing to the explosion."

The case distinguishes responsibility for steam boilers, from that for nitroglycerin, storing gun-powder, or blasting rocks, and says that public policy which seeks to secure the welfare of the many may demand a modification for boilers, of the strict rule of liability.

The case also specifically approves the doctrine in Rylands *v.* Fletcher, which it says has been approved in 106, 125 and 135 Mass., and in Cahill *v.* Eastman, 18 Minn. 324 (1871), which held the defendants liable without any negligence in construction and maintenance of a tunnel. That case examines at length the authorities and says as regards Brown *v.* Kendall, "the circumstances were such as to show plaintiff had taken the risk on himself, he voluntarily assumed a position, in which risk of collision was apparent."

ST. LOUIS, SAN FRANCISCO RY. *v.* MATHEWS.

(165 U. S. 1.)

(1896.)

In 165 U. S. 1, Railway Co. *v.* Mathews a statute of Missouri imposing an absolute liability upon railroads for fire was passed upon, and it was held that though imposing an absolute liability for doing a lawful act and conducting a lawful business in a careful manner, the statute did not violate the Constitution of the United States. The argument that it did, was met by tracing the history of the law regarding liability for fire. Mr. Justice Gray said that this country had not adopted generally the strict rule of the English Common Law, but the matter had been regulated by statute ever since the Massachusetts statute of 1631. He shows that in 1840, Massachusetts passed a statute making the liability of railroads absolute for fire, not dependent upon negligence, that in Vermont, Maine, New Hampshire, Con-

necticut, Colorado and South Carolina, similar statutes had been passed and after examination of decisions and authorities the following conclusions are reached:

First. England from earliest times held any one lighting a fire on his own premises to strictest accountability for damages by its spreading.

Second. Earliest statute which declared railroad corporation absolutely responsible independently of negligence for fire, was passed in Massachusetts, in 1840, soon after engines had become common.

Third. In England, then, undetermined whether railroad liable without negligence, as at common law, for fire, and result that it was not liable, after conflict of judicial opinion, only reached, when Parliament had expressly authorized corporation to use engines and had not declared it to be responsible.

Fourth. From 1840 validity of Massachusetts statute and similar statutes, upheld in every state of Union, in which question has arisen.

He adds that the constitutionality of such statutes has been assumed in 91 U. S. 492, and rests upon principles often affirmed by the Supreme Court. He then quotes Chief Justice Shaw (in *Com. v. Alger*) to the effect that it is a settled principle of well ordered society that every property may be regulated so that it shall not be injurious to the equal rights of others to their property, nor to rights of the community; and quotes from cases declaring the police power and the rights of a state in relation to charters of corporation.

He sums up the motives and risks which justify the legislation as follows: Fire a destructive element which when it has once gained headway can hardly be controlled. Railroads to carry out public object, authorized to use steam generated by fire. It is within the authority of legislature to make adequate provision for protecting the property of others against loss by sparks from engines. The right of the citizen not to have his property burned without compensation is no less to be regarded than the right of the corporation to set it on fire.

To require utmost diligence might not afford sufficient protection. When both parties equally faultless, legislature may properly consider it just that duty of insuring private property against loss by use of dangerous instruments should rest upon the railroad which employs the instrument and creates the peril for its own profit, rather than upon the owner of the property who has no control over or interest in those instruments.

In conclusion he says the statute is not penal, but it is purely remedial, making the party doing a lawful act for its own profit, liable in damage to the innocent party injured thereby. The statute is a constitutional and valid exercise of the legislative power of the State.

174 U. S. 96
Railroad
v.
Matthews.

In 174 U. S. 96, the Supreme Court held constitutional a statute of Kansas making fire, and damages, caused by operating the railroad, *prima facie* evidence of negligence against railroad, and allowing a reasonable attorney's fee as part of damages in a recovery under it, contributory negligence being considered in estimating damages.

Mr. Justice Brewer said the purpose is to secure the utmost care of railroad companies to prevent the escape of fire. Its monition is "see to it that no fire escapes from your locomotives, if it does you will be liable." The dangerous element employed and hazards to persons and property, arising from running of trains justifies such a law.

The Court cites a Kansas law of 1860, the effect of which was to change the rule of the common law, which gave redress only when the person setting fire did so through negligence, whereas this statute by mere fact of setting fire gave a right to recover damages.

In discussing the question whether prescribing a penalty without imposing a statutory duty to take precaution made a difference. The court said: "Our inquiry runs only to the matter of legislative power. If in order to accomplish a given beneficial result the legislature has power to prescribe a specific duty and punish a failure to comply therewith by a penalty, has it not equal power to prescribe the same penalty for failing to accomplish the same result, leaving to the corporation the selection of the means it deems best therefor. . . . We may think it better that legislation should be like that of Missouri, prescribing an absolute liability instead of that of Kansas, making the fact of fire, *prima facie* evidence of negligence, but . . . forms are matters of legislative consideration, results and power only are to be considered by the courts." Justice Brewer had referred to the Missouri statute held valid in *Ry. v. Mathews* 165 U. S. 1.

As regards the liability of carriers for damages.

183 U. S.

582.

v.

Zernicke

The Supreme Court held constitutional, the Nebraska Railroad incorporation law, requiring that railroads "shall be liable for all damages inflicted upon passengers, except from the *criminal* negligence of the person injured (or violation of regulation actually brought to his notice). Though the decision turned chiefly on the incorporation contract.

The Court said: Regarding as extending the rule of liability for injury to persons which the common law makes for the loss of or injury to things, the statute seems defensible. And it was upon this ground that the Supreme Court of the state defended and vindicated the statute.

The Court goes on to say: Our jurisprudence affords examples of legal liability without fault, and the deprivation of property without fault being attributable to its owner. The law of *deodands* was such an example. The personification of the ship in admiralty is another. Other examples are afforded in the liability of the husband for the torts of the wife,—the liability of a master for the acts of his servants.

A master is entirely without negligence, if an accident in his business be caused by the negligence of a competent fellow servant, yet statutes imposing responsibility on him for the negligence of fellow servants are upheld.

**127 U. S.
205.
v.
Mackey.**

In 127 U. S. 205, a statute of Kansas which made railroad companies responsible to their servants for negligence of their fellow servants, was upheld, as not violating the Fourteenth Amendment.

Mr. Justice Field when dealing with the contention that the law imposes a liability not previously existing and thus authorizes the taking of property without due process of law, after discussing the right of the states to prescribe liabilities for corporations, he adds. . .

"The supposed hardship and injustice consist in imputing liability to the Company, where no personal wrong or negligence is chargeable to it, or to its directors. But the same hardship and injustice exist for injuries to passengers."

And in dealing with "equal protection of the laws" he says: "But the hazardous character of the business of operating a railway would seem to call for special legislation with respect to railroad corporations, having for its object the protection of their employees as well as the safety of the public. As said by the Court below, it is simply a question of legislative discretion whether the same liabilities shall be applied to carriers by canal and stage coaches and to persons and corporations using steam in manufactories."

These authorities seem to indicate that:

English Common Law started with absolute liability, irrespective of negligence, for harmful acts.

That such liability was modified from time to time by judicial decision and statute to suit the prevailing ideas of social policy. That in accordance with such social policy such absolute liability remained for certain classes of acts. That it exists to-day for the custody and ownership of dangerous things, such as fire. That a man acts at his peril in certain situations, such as in creating a dangerous reservoir on his land, (*Rylands v. Fletcher*), and that a rule of absolute liability is moreover attached to certain contractual relations and callings, such as carriers of goods and apparently innkeepers. In the United States, too, it is seen that the Supreme Courts of certain of the states have adopted the doctrine of *Rylands v. Fletcher*, and admitted the existence in their common law of instances of absolute liability, irrespective of negligence. That the Supreme Court of the United States in decisions later than the Nitroglycerin case, has given recognition to the fact that such instances of liability irrespective of negligence, exist under the English Common Law (*Zernicke Case*), and exist in the texture of our law (as in the rule of master's responsibility for competent agent's negligence). It will be seen also that state statutes imposing an absolute

liability have been upheld by the Supreme Court of the United States, citing as justification, reasons of policy, such as protection of employees and safety of the public (Mackey case), and the difficulty of proving negligence, and justice, (Mathews case—just when both parties equally faultless duty of insuring against loss should rest on railroad, which creates the peril for its own profit), under the police power, as well as under the power of a state over corporations.

From statements made by the Supreme Court, it would appear, too, that development of the law in accordance with the needs of the times is not to be discouraged.

It has recently been decided in the Employers' Liability cases (207 U. S. 463), that Congress has the power under the Commerce Clause to regulate the relations of master and servant in interstate and foreign commerce as regards accidents in that commerce. Can it then be doubted that the Supreme Court would uphold the power of Congress, if in so doing it should see fit to adopt a rule of absolute liability irrespective of negligence for accidents to employees incident to such commerce, a rule that the whole experience of the civilized world has adopted as both expedient and just—thereby discarding the rule which requires proof of negligence, which that experience has proved to be inexpedient and unjust.

If such a statute be held unconstitutional by the Supreme Court of the United States, it must be so held, it seems to me, on grounds other than its imposing a rule of absolute liability, irrespective of negligence.

PRINCIPLES OF SOUND EMPLOYERS' LIABILITY LEGISLATION

BY F. C. SCHWEDTMAN,

Chairman Committee on Employers' Liability, National Association of
Manufacturers.

As the head of a committee of the National Association of Manufacturers, I made an inquiry among twenty-five thousand American manufacturers a little more than a year ago. It indicated that more than ninety-five per cent of those answering were in favor of an equitable, automatic compensation system for injured workers and their dependents. Employers as a class are as anxious to change the present cruel, inefficient and inequitable system into a better one as any other class of progressive men. Enlightened employers, large and small, are doing splendid work in voluntarily establishing relief systems providing prompt medical and financial aid. Several hundreds of thousands of workmen are receiving the benefits of voluntary action on the part of employers and future progress will be more rapid than that of the past.

Thousands of interviews and letters convince me that many employers would welcome compulsory legislation on this subject, if only somebody could tell them how it is to be accomplished in a manner which is constitutional as well as just to all concerned. Such systems as those outlined by the representative of the United States Steel Company and other large concerns will not work with the same degree of satisfaction in small establishments.

Much credit is due every employer who has voluntarily attempted to solve this great question, but let us not judge harshly those employers who have not been able so far to see their way to acting voluntarily. Many small employers have neither the means nor the ability to inaugurate systems of their own, nor could they afford to work under such systems as outlined by the representatives of large and wealthy concerns.

To cover the just requirements of all employers, as well as of all workers, fundamental principles need to be laid down, upon which legislative action should be based and the following principles

cover the views of the majority of the members of the National Association of Manufacturers, and I hope will be officially adopted at the next annual convention.

While endeavoring to establish compulsory compensation legislation, the progressive employers of the country will continue to introduce voluntarily equitable relief and accident prevention systems for their injured workers.

The fundamental principles of sound legislation on this subject as I see them are as follows:

First.—All legislation must be for compensation. Every kind of employers' liability legislation has proven a failure in every civilized nation.

Second.—Compensation legislation must cover every wage worker. The man who, without his own fault, loses his hand in a farm machine is as much entitled to compensation as the engineer who loses his hand in an engine gear.

Third.—Compensation must be assured. It must be certain as the interest on United States bonds. This can only be accomplished through insurance, approved and preferably guaranteed by the state or national government. However, every safe method of such approved insurance should be permitted and none barred. State, mutual and stock insurance, as well as relief systems covering individual shops, must be permitted and encouraged under the law.

Fourth.—Compensation must be efficient. Not less than seventy-five cents, and preferably ninety cents, out of every dollar paid into the insurance fund, should be paid to injured workers or their dependents. To this end, litigation and solicitation expenses must be reduced to a minimum, and arbitration courts, or a simplified court procedure required for settlement of disputes.

Fifth.—Employers and employees are jointly responsible for all unpreventable accidents and should therefore jointly meet the compensation expenditures, the employer covering that part which is due to his fault and to the inherent hazard of the industry; the employee covering that part which arises from his fault.

Sixth.—Every injury except those due to criminal carelessness or drunkenness on the part of the worker should be compensated.

Seventh.—Humanity and efficiency demand that prevention of accidents is made of prime importance. Therefore, an efficient official inspection and statistical system which increases or decreases

insurance rates in proportion to the accident prevention activities of each individual establishment is essential.

Eighth.—Since the progressive individual usually provides voluntarily for reasonable accident compensation, it is right that the reactionary or selfish individual be compelled to do likewise, through universal compulsory insurance.

Ninth.—To prevent unfair competition between employers in different localities, it is necessary that compensation laws of the various states be reasonably uniform.

PROGRESS IN LEGISLATION CONCERNING INDUSTRIAL ACCIDENTS

BY GEORGE W. ANDERSON,
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After years of discussion, the case against our present American method of dealing with industrial accidents is fully made out; the difficulty is to agree upon an adequate and constitutional remedy. In this discussion the representatives of great employers of labor have been among the strongest advocates of remedial legislation. Already many of our great corporations have abandoned the negligence theory as being both unjust and inexpedient. In the large industries, voluntary arrangements between employers and employees have already accomplished much. It still remains, however, to apply the compelling process of the law to the many, particularly to the smaller employers, who still linger haltingly in the old morass of "due care" and "negligence."

Two main questions arise for present consideration:

1st: What may American Legislatures constitutionally do?

2d: Assuming freedom of choice, what is the system to choose?

Of actual remedial legislation there is little. Washington has just adopted a species of state insurance applicable to so-called "hazardous occupations." New Jersey has dealt with the problem by passing an act which takes away from the employers practically every defence known to the common law, providing also an elective compensation scheme, which compensation scheme is presumed to be a part of all contracts of hiring made subsequent to the act, unless the parties in writing otherwise expressly provide. Manifestly, this is an attempt to make subsequent hiring contracts conform to the legislative standard of a proper public policy, without explicitly and absolutely making employers liable for accidents due in no part to their fault. The legislative status in many other states, particularly in Minnesota, Wisconsin and Ohio, makes it probable that there may be further legislation before these notes are in print.

The legislative experience calling for most discussion is that of New York. In that state a very able commission made, in 1910,

a report which is one of the best, if not the very best, documents extant on industrial accidents. The recommendations of the commission, slightly amended, were enacted into law and approved by Governor (now Mr. Justice) Hughes. That law has just been declared unconstitutional by a unanimous opinion of the court of last resort in New York. The grounds of that decision naturally furnish a starting point for discussion of the constitutionality of remedial legislation.

I. *Constitutionality*

The gist of the New York Act was—to make the employer responsible in "intrinsically dangerous industries," except when the victim was guilty of serious and wilful misconduct—adopting in these industries practically the rule of liability of the English Compensation Act. The New York Court of Appeals held that it was within the power of the Legislature to abolish the fellow-servant rule, the assumption-of-risk rule and the contributory-negligence rule; but held it unconstitutional to make the employer liable for an injury for which the employer was in no respect at fault. Chief Justice Cullen said: "I know of no principle on which one can be compelled to indemnify another for loss, unless it is based upon contractual obligation or fault."

At the outset it is worth while to note that a liability act framed exactly in accordance with the opinion of these learned judges would be very nearly as broad in practical operation as the act held unconstitutional. Take away from the employer all these defenses of fellow-servant, assumption-of-risk and contributory-negligence, leave the employee his constitutional right of a jury trial, and the employers of New York will win no cases, except when the employee is guilty of serious and wilful misconduct. It is not a substantive and valuable right of the employer that the Court of Appeals has protected by this decision.

But, with all respect to the learned opinion of this great court of the Empire State, its reasoning does not convince. It is not true, and it never has been true, that the common law does not impose liability without either a contract or a fault. The doctrine, *respondeat superior*, on fair analysis, goes precisely as far as the doctrine underlying the New York legislation. The employer who selects his employee with the greatest care and gives him the most

explicit directions as to the conduct of his business, is not guilty of "fault" when that employee, in utter disregard of the directions, negligently injures a stranger. The liability of that employer to the stranger is based neither "on contractual obligation" nor on "fault"; rather is it, as Chief Justice Shaw said in the Farwell case,¹ "The maxim *respondeat superior* is adopted in that case from general considerations of policy and security." A fault is the doing of something that one ought not to do, or the omitting to do something that one ought to do. The employer in the case stated is guilty of no sin of omission or commission. The only thing he has done which he might omit to do, is to employ. Society says: "From general principles of policy and security we will hold the employer liable for the employee's torts within the scope of the employment." The New York court brushes aside this general welfare principle by saying slightly, "The whole theory is expressed in the maxim, '*Qui facit per alium, facit per se.*'" It was Mr. Birrell, I think, who somewhere says, in substance, that lawyers, when sense and logic fail, resort to Latin maxims. His jibe is pertinent.

The laws of most of our states make a man liable to support not only his wife and his child, but his father and his grandfather.² Doubtless one might be held "to blame" for having a wife or a child, but it is not a fault to have a father or a grandfather; yet society takes our property to support our parents and grandparents.

If our constitution asserts a really logical individualism, a large share of our taxation is unconstitutional. At bottom there is no justification for taxing us to support the insane, the idle, the vicious, the unfortunate of all classes, except that the general welfare of society demands it, except that our public policy asserts that society owes every man, however useless or vicious, a living. No protectionist certainly can be heard to argue that the power of taxation may not be used for a purpose private as well as public, justifying it upon the theory that private profit is public advantage.

The New York court seems to have overlooked what is really the gist of the question. Somebody must bear the burden of the industrial accidents which are found to be an inevitable incident of modern industry. Manifestly, it is just that that burden should be thrown upon the consumer in the price of the product. Putting the

¹4 Metcalf, 56.

²Compare Revised Laws, Mass. c. 81, sec. 10.

liability upon the employer is nothing but a means, and apparently the most direct and efficient means, of making the price of the product include the cost (or a part of it) of the waste of the human tools necessarily employed in that production. The decision of the New York court is, therefore, that the legislature cannot, at least in the method adopted, make these hazardous industries self-supporting.

The New York court dissents from the doctrine of the Supreme Court of the United States in *Noble State Bank vs. Haskell*, 219 U. S. 104, in which, in an opinion recently written by Mr. Justice Holmes, that court unanimously held that the Oklahoma statute requiring compulsory insurance among state banks was constitutional.

Coming at this time, this decision of the Supreme Court of the United States is profoundly significant. The opinion is, perhaps, even more significant than the decision. The question was whether the Oklahoma statute, requiring the state banks to contribute to a depositors' guaranty fund, was depriving the solvent banks of their property without due process of law. It is obvious that such a law may, and indeed is intended to, require the solvent banks to pay, *pro tanto*, the debts of the insolvent banks. The law could doubtless have been supported as nothing but an amendment to the charters of the banks. But the court did not, in its opinion, put it upon that narrow ground. Rather did the court seem to take pains to assert a broader doctrine as to the limits of legislative power under the general welfare, or police power, clauses, than has ever before been asserted by the Supreme Court of the United States, and perhaps by any court of last resort in this country. Mr. Justice Holmes says, "We must be cautious about pressing the broad words of the Fourteenth Amendment to a dryly logical extreme. Many laws which it would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guaranties in the Bill of Rights. They more or less limit the liberty of the individual, or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it often is difficult to mark the line where what is called the police power of the states is limited by the Constitution of the United States, judges should be slow to read into the latter a *nolumus mutare* as against the law-making power."

. . . . "Nevertheless, notwithstanding the logical form of the objection, *there are more powerful considerations on the other side*. In the first place, it is established by a series of cases that an *ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use.*" . . . "And in the next, it would seem that there may be other cases beside the every-day one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume." . . . "At least, if we have a case within the reasonable exercise of the police power as above explained, no more need be said. It may be said in a general way that the police power extends to all the great public needs. (Canfield vs. United States, 167 U. S. 518, 42 L. Ed. 260, 17 Sup. Ct. Rep. 864.) It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce." (Italics mine.)

Of this opinion, and of two other recent similar decisions by the Supreme Court of the United States, the New York court said, "We cannot recognize them as controlling of our construction of our own constitution. . . . All that it is necessary to affirm in the case before us is that in our view of the constitution of our state, the liability sought to be imposed upon employers enumerated in the statute before us is a taking of property without due process of law, and the statute is, therefore, void." This is a plain declaration that the New York Court of Appeals, as now constituted, will not sustain as constitutional such legislation as the Supreme Court of the United States holds valid.

The position now taken by the Supreme Court of the United States, as now constituted, is the more significant when one considers certain historical incidents, and particularly the historical incident of the attitude of Mr. Justice Holmes on the proper dividing line between legislative powers and judicial powers, as shown by his opinions for twenty years.

In 1891, the Supreme Judicial Court of Massachusetts held unconstitutional the Weavers' Fine Bill, prohibiting the imposing of

fines as a penalty for alleged imperfect weaving. No other case in Massachusetts slants so strongly towards the fashionable modern doctrine of giving to our courts of last resort a veto power on legislation which has passed both legislative bodies and been approved by the executive, thus making our courts, in effect, a fourth legislative body. In his dissenting opinion, Mr. Justice Holmes took strong grounds against any such assumption of power by the courts. He said, "So far as has been pointed out to me, I do not see that it interferes with the right of acquiring, possessing and protecting property any more than the laws against usury or gaming. In truth, I do not think that that clause of the Bill of Rights has any application. It might be urged, perhaps, that the power to make reasonable laws impliedly prohibits the making of unreasonable ones, and that this law is unreasonable. If I assume that this construction of the constitution is correct, and that, speaking as a political economist, I should agree in condemning the law, *still I should not be willing or think myself authorized to overturn legislation on that ground, unless I thought that an honest difference of opinion was impossible, or pretty nearly so.*" . . . "I cannot pronounce the legislation void as based on a false assumption, since I know nothing about the matter one way or the other." (Italics mine.)

One of the most noteworthy of these minority opinions is his dissent in the New York bake-shop case,³ in which, *inter alia*, he said, "This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But *I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law.* It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious or if you like as tyrannical as this, and which equally with this interfere with the liberty to contract. Sunday laws and usury laws are ancient samples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well-known writers, is interfered

³Lochner vs. N. Y., 198 U. S., 45, 74.

with by school laws, by the post-office law, by every state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics. The other day we sustained the Massachusetts Vaccination law. (*Jacobson vs. Massachusetts*, 197 U. S. 11.) United States and state statutes and decisions cutting down the liberty to contract by way of combination are familiar to this court. (*Northern Securities Co. vs. United States*, 193 U. S. 197.) Two years ago we upheld the prohibition of sales of stock on margins or for future delivery in the constitution of California. (*Otis vs. Parker*, 187 U. S. 606.) The decision sustaining an eight-hour law for miners is still recent. (*Holden vs. Hardy*, 169 U. S. 366.) Some of these laws embody convictions or prejudices which judges are likely to share. Some may not. But a constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of laissez faire. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States."

The simple truth is that the Supreme Court of the United States has in some cases, and the courts of last resort of some of the states have in rather numerous cases—been sitting as American "Houses of Lords," reviewing, and frequently vetoing, legislation which the more representative bodies have enacted.

In the New York bake-shop, the Supreme Court of the United States held, by a bare majority, that it was unconstitutional to prohibit men from working over ten hours a day in the bake-shops of New York. In the Oregon case⁴ the same court unanimously held that it was constitutional for the Oregon Legislature to prohibit women from working in certain factories more than ten hours a day. This amounted to saying that in the New York case the Supreme Court thought that it was sound public policy to permit men to work more than ten hours a day, and in the Oregon case that it was sound public policy not to permit women to work more than ten hours a day. But this is a pure question of legislative fact, to be determined by the legislature, and in no proper sense a judicial or constitutional question at all.

⁴*Muller vs. Oregon*, 208 U. S. 411.

Our courts of last resort have always held restrictions upon contracts to be constitutional if they approved of the restrictions. They have strongly tended to hold them unconstitutional if they disapproved of the restrictions. Whenever what are sometimes called the "moral forces" of the country demand a certain kind of legislation; for instance, the restriction of the liquor traffic, the prohibition of lotteries and various other forms of gambling, the courts have had little difficulty in holding such restrictions valid. The difficulty with legislation for workmen's compensation is that a large share of our judges have utterly failed to grasp the economic and industrial facts underlying the problem, and therefore tend to arrogate to themselves legislative functions which do not belong to them. The fundamental difficulty is that the courts have usurped legislative functions. The true rule is, as stated by Mr. Justice Holmes, "Where there is, or generally is believed to be, an important ground of public policy for restraint, the constitution does not forbid it, whether this court agrees or disagrees with the policy pursued."⁵

As a historical fact, the founders of our government probably never intended to subordinate the executive and legislative branches of our government to the judicial, by permitting the judiciary to nullify the acts of the legislature or of the executive as unconstitutional. But, assuming that it is now the settled American policy that the judiciary is the constitution-enforcing power, it will never be the American policy that the judiciary shall determine legislative questions turning upon questions of fact as to which the court is often entirely ignorant, and which it has no proper means of bringing before it.

Mr. Brandeis won the Oregon ten-hour-law case because he put before the Supreme Court evidence in the form of a brief bearing upon industrial, physiological and economic conditions as to women, eminently fit to be put before a legislative committee, but, in proper perspective, having no rightful place in the argument of a constitutional question before the greatest court on earth.

No one has been more sensitive to this increasing encroachment of the judiciary upon the legislative branch than have some of our judges. It can be no mere accident that this opinion of the Supreme Court of the United States in the Oklahoma case, coming shortly after its substantial reorganization, has laid a broader and deeper

⁵Adair *vs.* United States, 208 U. S. 161, at 191.

foundation for the general welfare power than has been hitherto thought to exist. It is impossible to escape the conviction that the Supreme Court of the United States would easily have held constitutional the statute that the New York Court of Appeals has declared unconstitutional.

In Massachusetts, on the whole, the tendency of the courts has been not to exaggerate their power of overturning deliberate and important acts of the legislature as unconstitutional. Yet, even in Massachusetts, an eminent attorney general had occasion to point out in his annual report as early as 1894, that, "Within the last four years more statutes have been declared unconstitutional than in the first seventy years under the constitution," and to set forth in the same report the following:

"The legislature cannot be unmindful of its own responsibility to guard against unconstitutional enactments; a responsibility which cannot be devolved upon the judiciary and ought not to be shared with it. On the other hand, an eminent judge long ago said, foreseeing the absolute importance of preserving the right equipoise of power between the different departments of the government, 'The interference of the judiciary with legislative acts, if frequent or on dubious grounds, might occasion so great a jealousy of this power and so general a prejudice against it as to lead to measures ending in the total overthrow of the independence of the judges, and so of the best preservative of the Constitution. The validity of a law ought not, then, to be questioned unless it is so obviously repugnant to the Constitution that when pointed out by the judges, all men of sense and reflection in the community may perceive the repugnancy. By such a cautious exercise of this judicial check, no jealousy of it will be excited, the public confidence in it will be promoted, and its salutary effects be justly and fully appreciated.'"

Recent decisions of the Massachusetts court do not indicate that that court as now constituted will easily or carelessly hold legislation unconstitutional; rather the contrary, as shown by a recent decision limiting the assignment of wages without the written assent of the employer and, if the employee was married, without the written assent of his wife—thus establishing, arguably at least, a double guardianship over the employee. But our court, in an opinion written by the present Chief Justice,⁶ held that the statute was within the constitutional power of the legislature, as the legislature "might adopt this form of regulation as salutary in its application to most members of the class with which they were dealing."

⁶*Mutual Loan Co. vs. Martell*, 200 Mass. 482.

The form that remedial legislation for industrial accidents shall ultimately take must be determined by the sound public opinion of the American people, and not by the "dryly logical" reasoning processes of certain learned judges, many of whom know more of the contents of the Year Books than they do of the conditions of modern industry. Doubtless certain courts will continue to attempt to sit as Houses of Lords, but in the long run these attempts will be failures. It should be assumed that our constitutions, national and state, do not limit honest and intelligent attempts to deal with this great economic and social evil.

Nothing worth while will be accomplished if American legislatures do not assume their proper responsibility in determining the proper American policy in dealing with industrial accidents. It is profoundly important that our legislatures should assert their paramount right to determine finally all questions which are in truth legislative and not judicial.

II. *The Form of the Remedy*

Second. The Form of the Remedy:

Broadly speaking, proposed legislation in America follows one of two models:

(a) The English model, which is in effect an extended Employers' Liability Act.

(b) The German model, which deals with industrial accidents as one of the inevitable risks of life and requiring compulsory insurance.

(a) Naturally, and for good reasons if the principle is sound, the tendency in America is to follow the English model. But it will be unfortunate if we do follow that model in dealing with industrial accidents. The English act has, broadly speaking, not been a success. This is not saying that the English Compensation Act has not created conditions better than formerly existed, and far better than those which now exist in America. It is saying that that Act is based in large part upon a wrong principle, and is less successful than the German act.

The English, like ourselves, are obsessed with theories of individualism utterly unadapted to modern conditions. In fact, our modern conditions are those of feudalism. This is not the place to elaborate the comparison, but most careful observers recognize that

the modern factory system is as feudalistic as the mediaeval land-holding system: the few are placed in positions of power where they may, and do, control the conditions and means of livelihood of the many. Our competitive "freedom" is not a freedom which enables the many to determine their conditions of labor or to insure to themselves their fair proportion of the product.

But when the English, in the late 70's, recognized the ghastly injustice of the common law in dealing with industrial accidents, they refused to recognize that the risk of industrial accidents was one of several risks that the employee does not, and cannot, guard himself against; the other risks—equally destructive of wholesome and happy living—being the risks of sickness, of early death, and of a non-productive old age. Their Employers' Liability Act of 1880 simply took away from the employer some of the defenses that judge-made law had created for the employers' benefit. It was a failure. Mr. Chamberlain said it should be called the Lawyers' Employment Act.

In 1897 their Compensation Act took away from the employers all defenses except that the accident was caused by the wilful and serious misconduct of the injured employee. But neither the Compensation Act of 1897 nor its subsequent amendments in 1900 and 1906 provided any insurance scheme for pro-rating and equalizing the losses accruing from industrial accidents, either among the employers or between the employers and the employees. It assumed that employers whose business interests were not large enough to enable them to carry their own risks, would secure themselves, and indirectly their possibly injured employees, by obtaining insurance from the private liability companies which had come into existence after the passage of the Employers' Liability Act of 1880. The result is that in England substantially all the small employers now insure in these private liability companies engaged in this ghastly traffic in life and limb purely for profit. The accident business never has been, and never can be, properly administered by an outside company intervening between employer and employee and finding its profit in preventing the victims from obtaining any (or adequate) relief. The insurance adjuster is the correlative of the ambulance chaser; both are, viewed in proper perspective, parasites—creators of strife and inhumanity; both should be eliminated before industrial accidents can be humanely and economically dealt with.

The English Compensation Act has not decreased litigation—it has increased it. It has not, so far as can be ascertained, tended to decrease the number of accidents; except in rare cases, the employer paying a flat rate for his insurance gives no more attention than formerly to safety devices; the companies, being engaged as they are in a somewhat violent competition for patronage, dare not—and do not—enforce safe-guarding methods and devices.

Nor is the English Compensation Act in any way correlated with the widespread and benevolent work of the Friendly Societies and other voluntary organizations paying benefits to injured or otherwise disabled workmen. The English have already legislated with relation to old-age pensions, and are struggling with non-employment, a far more difficult question. But their legislation has been, broadly speaking, patch-work; and patch-work mainly because they refused to face the facts that the great multitude of their people are living under a wage system which leaves them, as individuals, no margin to provide against the risks of accident, sickness, early death or unproductive old age.

Some one has said that the essential difference between the English mind (and ours is the English mind) and the German mind, is that the German mind ascertains facts and, having ascertained them, respects them; that the English mind cares only for theories; if the facts do not accord, so much the worse for the facts.

(b) The Germans in the early 80's faced, they did not blink at, the facts of our industrial organization, and provided for industrial accidents simply as a part of a general scheme of workmen's insurance. There is no other logical, efficient and proper way with which to deal with it. So dealt with, the difficulties are great enough; and no perfect system has yet been devised in Germany. But it is beyond question that to-day Germany has the most efficient and the most humane industrial system of any of the great nations. The relations between employer and employee have been improved. The number of the permanently injured has been diminished. The tendency is almost certainly to a diminution of the number of accidents. But the important thing is that their system is upon a proper logical and industrial basis. It deals with the problem of industrial accidents as an insurance problem and not as a fault problem. It recognizes that accidents, whether due to the employer's fault, employee's fault, the risks of the business or a combination of causes

known and unknown, are certain to happen, and that their happening is an event of social importance, not a mere individual misfortune. It deals with these risks of life, just as the Germans and ourselves have dealt with education, as a great social need. It recognizes that even if the employees could, as they cannot, be made to see the desirability of insurance, that the cost of solicitation in the absence of compulsion would throw an intolerable burden upon the working classes even if otherwise, and there are a few hopeful precedents, we could get insurance companies economically organized and managed; that the cheapest and most efficient insurance solicitor is the "Thou shalt" of the law.

The state must recognize that insurance is as much a necessity for social welfare as education is a necessity. It is a matter of detail whether the employer shall be compelled to insure his employee against some or all of the accidents arising out of the employment, or whether the employee be compelled to insure himself. The important thing is to cut loose once and for all from the theory that accidents are to be dealt with solely upon the basis of the fault of either employer or employee, or the fault of both.

The theory of individualism is that each person should take care of himself, and that society will profit out of his so caring for himself. The theory fails. The sound theory of "collectivism," or whatever one chooses to call it, is that, within certain proper limits, the mass of the people must be compelled to take care of themselves, by co-operating, so as to equalize and pro-rate risks which, borne where they fall, work destruction, cause barbarism, are intolerable; but which, pro-rated and equalized by a proper insurance system, constitute a burden easily carried.

NEW JERSEY EMPLOYERS' LIABILITY AND WORK-MEN'S COMPENSATION LAW

BY WILLIAM B. DICKSON,

Formerly First Vice-President United States Steel Corporation.

In discussing this subject of "Employers' Liability and Workmen's Compensation," I will not attempt to review the past nor to indicate the steps by which this important subject has been brought so prominently before the American people. The evils of the old system are generally recognized and admitted by intelligent employers. That public opinion has been thoroughly aroused is evident from the fact that in ten states commissions have been appointed by the governors or legislatures to study these questions and recommend legislation.

In April, 1910, Governor Fort, of New Jersey, acting under a joint resolution of the Legislature, appointed a commission to inquire into and recommend legislation on the subject of employers' liability. This commission, of which I had the honor to be president, was composed of two employers, two representatives of labor, and two legislators; one each from the House and the Senate.

In January of this year, the commission presented their report, accompanying it with a proposed bill on employers' liability and workmen's compensation. This bill passed in the Senate by a vote of sixteen to one, and on Monday of this week (April 3, 1911), passed in the house by the remarkable vote of fifty-four to nothing, and was signed by Governor Wilson on Tuesday, April 4.

New Jersey has thus given a notable lesson in non-partisan legislation. The commission was appointed by the Republican Governor, Fort. The commission's bill was passed by a Republican Senate by a vote of sixteen to one, and then by a Democratic House by a vote of fifty-four to nothing. Last, but not least, it was signed by that great representative of true democratic principles, Governor Wilson. I am by tradition a republican, but if the democratic party can produce and will sustain leaders such as Governor Wilson in New Jersey and Francis Lynde Stetson in New York, I can imagine no more inspiring career for the young

man ambitious to serve his country than to fall in behind and keep step with such men.

The bill is divided into three sections and may be briefly outlined as follows:

Section I

This section deals entirely with modifications of the present law. It retains the proviso that the negligence of the employer must be shown to have been the natural and proximate cause of the injury. This proviso was retained, not because the commission did not believe in compulsory compensation, but because the weight of legal opinion received in reply to inquiries, was against the constitutionality of any plan whereby an employer would be compelled to compensate an injured workman regardless of his (the employer's) fault or negligence. The wisdom of this conclusion has since been demonstrated by the recent decision of the New York courts, declaring the New York act in this respect to be unconstitutional, even in the hazardous trades.

The New Jersey elective scheme differs from that of New York in an essential feature, in that the election must be made at the time of hiring; whereas, in New York, it is made after the accident. As a result, I am informed that the New York law has been practically a dead letter, as the workmen have naturally elected to sue under common law rights. In New Jersey, if the workman at the time of hiring refuses to accept a compensation law which the legislature has declared to be equitable, the employer can refuse to hire him, and in doing so will no doubt be sustained by public opinion.

Section I, however, modifies the present law of employers' liability by entirely abrogating the two old defenses, usually known as "fellow servant" and "assumption of risk." It also modifies the law of "contributory negligence" by providing that the employer must prove that the negligence of the employee was "wilful." This term is defined in the bill as (1) "Deliberate act or deliberate failure to act, or, (2) such conduct as evidences reckless indifference to safety, or, (3) intoxication."

It will be observed that this section deals entirely with the liability of the employer, and, standing alone, strips the employer of those defenses which in the past have been of the greatest value

to him in defending suits at law. The members of the commission were unanimous in their opinion that, regardless of any other legislation, the above modifications in the present law should be made, for the following reasons:

1st.—The defense of "fellow servant." In the great majority of cases, the employee has no voice in the selection of his fellow servants, and the mere fact of having the same employer should not, *in itself*, release the employer from a liability which he would otherwise incur. The injustice of this rule may be illustrated thus: An accident occurs, due to the act of an employee, which results in the injury of a fellow employee, and also of an outsider in no way connected with the work. The outsider may, and often does, secure redress, while the employee is barred solely on account of his being a fellow servant.

2d.—The defense of "assumption of risk." While theoretically, a workman may be presumed to have a choice in the selection of his employment, and to have carefully weighed the risks naturally inherent therein before going to work, as a matter of fact, in the vast majority of cases the choice is narrowed down to the acceptance of such risks or no work.

In this connection, the objection has been made by some employers that, for extra hazardous work, extra wages are paid. An instance was cited where riveters in a shop were paid \$3.00 per day, while men doing the same work in the erection of high steel buildings were paid \$6.00. The commission's view of this objection was that in the case of the workman on the high building, he was placing his life and limbs in jeopardy every minute of the day, and this should be a sufficient offset to the extra wage without asking him to throw into the scale also the future welfare of those naturally dependent on him.

3d.—The defense of "contributory negligence." The commission recognized the fact that this defense is founded on principles of justice. As the law now stands, however, any degree of negligence on the part of the employee was sufficient to bar his action, even though the employer was also guilty of negligence. In order to prevent injustice by the non-suiting of an injured employee on a mere technicality, i. e., where his negligence is relatively trivial, the commission incorporated in their proposed bill a provision that the employer must prove "wilful negligence" on the part of the employee.

In suggesting these modifications in the present law, the commission intended primarily to abolish these obsolete defenses because of their inherent injustice. Incidentally, however, the removal of these defenses leaves the employer in a less tenable position in ordinary suits at law, and he will therefore naturally be more willing to assent to the provisions of Section II.

Section II

This section contains an elective system of workmen's compensation and is made as nearly as possible automatic and universal by providing that every contract of hiring, express or implied, shall be presumed to have been made with reference to the provisions of this section, unless either party has notified the other in writing of his intention to continue under his common and statute law rights, as expressed in Section I. Then follows the schedule of compensation, which may be briefly summarized as follows:

For temporary disability—50 per cent of wages. For disability total and permanent—50 per cent of wages for 400 weeks. For disability partial and permanent—A schedule of definite injuries has been prepared covering as nearly as practicable the most common and obvious forms of injury. The compensation is half wages, ranging from five weeks for the loss of one joint of a toe, up to two hundred (200) weeks for an arm. For death, the compensation is based on the number and relationship of actual dependents, but is distributed, in case of no will, in accordance with the intestate laws of the state. The maximum in all cases, including death, is \$10.00 per week for 300 weeks, except in case of total permanent disability, when payment is extended to 400 weeks. This bill applies to all employments, including domestic service, the only exception being "casual employments."

Section III

This section deals principally with definitions, but aside from these has one paragraph to which the commission attaches great importance, i. e., a proviso that Sections I and II are declared to be inseparable, and if any essential part of either section be declared unconstitutional, so that the whole of such section must fall, the other section must fall with it and not stand alone. In framing this clause, the commission had in mind the situation which exists to-day

in Ohio, where a law has been passed which simply removes the employer's present defenses. Laboring under this handicap, the Ohio employers are now striving to influence pending legislation, which will provide for workmen's compensation, but, of course, they cannot hope to wield as much influence as before the defenses were abrogated.

The New Jersey Commission, while unanimously of the opinion that the two defenses of "fellow servant" and "assumption of risk" should be entirely abrogated, and that of "contributory negligence" materially modified, have tried to deal with the whole subject in a practical and businesslike manner, by incorporating in the same bill the removal of these defenses and the schedule of compensation. Their aim has been, not to strip the employer of his defenses without giving him a harbor of refuge, and by the proviso mentioned, these two ideas are made to stand or fall together.

The one weak point in most of the legislation proposed in the various states, including New Jersey, is the fact that, in the last analysis, the payment of the compensation, even after the amount has been agreed upon, is dependent on the continued solvency of the employer. This condition will probably be met, partially, at least, by legislation permitting the transfer of the liability to the company insuring the employer, providing that such company is approved by the State Commissioner of Insurance.

The commission confidently expects that the elective section of the act will be generally accepted by both employers and employees, for the following reasons:

BY THE EMPLOYER: 1st—Because his liability is limited, and he is thus relieved of the danger of harassing lawsuits for excessive damages.

2d—By reason of the abrogation of two defenses and modification of another, the position of the employer who refuses to accept the elective law will be less tenable.

3d—Because he can in a large measure add the expense to cost of manufacture and recover it in his selling price.

4th—Because he can readily insure his liability.

BY THE EMPLOYEE: 1st—The practical certainty of settlement in accordance with the schedule, as against the uncertainty of an appeal to common law rights.

2d—Promptness in settlement, as against the "law's delay."

3d—All the money is paid to the injured person, as against the heavy attorney's fees and court expenses of the suit at law.

In the various hearings on the proposed bill, the one feature which has impressed me most has been the evident fear on the part of the small manufacturer, or employer, that the bill will impose unusual burdens on him. It seems to me that the answer to this is that he can protect himself by insurance. That the cost of insurance under existing systems is excessive, I believe to be true, but that is not the worst feature. Heretofore, the aim of the employer has been to seek by insurance to minimize the outlay, and the welfare of the injured, or his dependents, has not been a factor in the problem. The present system simply shifts the fight against the injured employee from the employer to the insurance company, which throws the whole force of its trained legal organization and its financial resources, against the inexperienced, ignorant, or otherwise helpless injured employee. In fact, the whole aim of the insurance company has been to use every legal device to avoid payments to victims of accidents.

That they have been fairly successful in attaining this object would seem to be indicated by the report of the New York Commission, which shows from statistics of nine companies that on an average only 36.34 per cent of that which employers pay in premiums is paid in settlements of claims and suits. This is clearly a great economic waste.

The remedy lies in the organization of one or more mutual accident insurance companies, conducted along the same lines as have been so conspicuously successful in the factory mutual fire insurance companies, which have been operating for the past sixty years in New England. The first purpose of these companies has been to prevent fires. They not only advise their members just what must be done to prevent fires by methods of construction and maintenance, but they go further and refuse to admit to membership any factory which will not conform to their high standards.

The result has been a reduction in the cost of fire insurance from \$2.50 per \$100.00 to 7.17 cents, which latter figure is the average yearly cost for the past thirteen years. The adoption of this system will fully protect the small employer, and will at the same time attack the problem at the right end by reducing the number of accidents, which, after all, is the great desideratum. I

venture the opinion, with all due respect to our friends the insurance men, that in the near future it will be repugnant to an aroused and enlightened social conscience, that the insurance of injured workmen should be a source of profit to any one.

Imitation is the sincerest form of flattery. I have here a draft of an act which, within the past week, has been presented to the Pennsylvania legislature by men affiliated with the labor interests of your state. This act is practically a duplicate of the New Jersey one; the only changes being minor ones to make it conform to the local conditions.

This New Jersey bill is probably the most advanced legislation on this subject in this country. Personally, however, I am convinced, from my study of the subject, that even this bill, while a distinct advance, does not provide a permanent solution of the problems involved. This, in my judgment must come through a system of state insurance, which shall be compulsory, both on the employer and the employee. Before such a plan can be adopted in this country, it would seem that the federal and state constitutions must be amended.

NEW JERSEY EMPLOYERS' LIABILITY ACT

By Hon. WALTER E. EDGE,
Of the New Jersey State Legislature.

It has been almost inconceivable to me that this country of ours, so advanced in practically every other problem that it undertakes to solve, has been apparently so backward in what should appeal, and I believe does appeal, to mankind and womankind as the most important social problem of the day, that of the settlement of employers' liability, or the payment of workmen's compensation.

In New Jersey, as in other states, we have been battling with this problem for a number of years, and through legislative enactment about a year ago a commission was appointed by Governor Fort to study the subject and report their conclusions accompanied by a suggested act for legislative consideration. It has been my pleasure to serve on that commission, and during the present session of the Legislature to stand sponsor for a bill which has passed the Legislature with the support of both great political parties and has received the approval of Governor Woodrow Wilson. We believe this measure the most advanced, along these lines, yet attempted in this country.

During our investigation of this subject I was particularly impressed with the apparent lack of knowledge on the part of successful employers of labor as to the relative difference between employers' liability legislation and that embodying the principle of workmen's compensation. When employers' liability is considered, it matters not what the legislation may be, whether it removes many of the present obsolete defenses of the employer, or whether it adds to his defenses, the economic result is just the same, inasmuch as with employers' liability the method of settling disputes between master and servant results inevitably in war and litigation. On the other hand, with the complete setting aside of employers' liability and the substitution of a fair workmen's compensation law, acting automatically, the result is industrial peace.

It is generally conceded that 20 per cent of all litigation to-day, clogging the machinery of our courts, consists of suits between em-

ployer and employee; and certainly removing so much of this uncertainty and contest is in the interest of a developed, enlightened government. Unfortunately the constitutions of most of our states make it doubtful whether a compulsory compensation act can stand the test of the courts. Even by broadening or expanding as far as possible the police power, a compulsory law is still very questionable. The recent decision in New York State accentuates and emphasizes this belief.

We believe that we have not trespassed upon the constitution to the extent that the Supreme Court of New Jersey will declare the bill just signed by Governor Wilson unconstitutional. We contend that we give the right of trial by jury if either the employer or employee so elects; we have not taken away court trials, if they so elect; we have unquestionably removed, and so they should be removed, many of the defenses existing under present law, namely, assumption of risk, fellow servant doctrine, and to some extent modified the contributory negligence defense. I contend that that should be done away with, as a matter of common sense justice.

In doing that we have attached an employers' liability section to our workmen's compensation act, believing that with the removal of these defenses, the average employer will elect to act under the compensation feature of the act. We want him to. We would do just as New York tried to do, if the constitution would allow a compulsory compensation act, but we appreciate perfectly well, and we appreciate it all the more since the New York decision, that that would be unwise, and the presupposed result would be that we have nothing, no law at all. Organized labor, on the other hand, if sincere, and I believe it is, will also elect the compensation feature of this act. The Allied Federations in New Jersey unanimously passed favorable resolutions to this particular act. They have practically announced, through resolutions they have passed, that they propose, so far as organized labor can control that situation, to accept compensation and to be absolutely fair to the employer.

Our act makes it necessary for this election to be made before the accident occurs; in other words, we do not believe that it is fair that the employer should be under double liability of court trial and automatic compensation, so we believe in the scheme that we have worked out that we have practically enacted a compulsory workmen's compensation act, compulsory in terms, and it will be so

regarded by employers and employees, and yet we have not, so far as the constitutional requirements are concerned, taken away the absolute right of trial, if either party so elect before the accident occurred. I think that that is a different form from any yet enacted, and I am particularly happy that that state is New Jersey, and we will give employers all through this country an opportunity to see an act actually in operation and see just what the results are under that act, how expensive, how high the liability insurance may be under a direct compensation act. In other words, before we attempt to amend the Constitution of the United States, and the constitution of every state, the operation of just such an act as this will be of great benefit in helping to solve this problem from an American standpoint.

At first blush the employers in New Jersey were inclined to oppose the measure and the employees to favor it, but as the idea has been more generally explained and understood we find some of our largest employers frankly agreeing that ultimately they will be better off not to be compelled to defend law-suits, but to have a fixed sum of payment covering all classes of accident, irrespective of the question of negligence; and that ultimately the compensation paid under this act will naturally be distributed, just where it belongs, on the consuming public.

In other words, American citizenship and humanity does not allow an injured man to walk about the streets uncared for; as, at great expense, the public is maintaining, mainly through charity, many institutions to properly look after unfortunate people. The public is paying this bill. Is it not then very much better to remove 20 per cent of the litigation of to-day and by natural economic law distribute the extra cost, if it is an extra cost, among the manufacturers and finally among the consumers, thus equably disposing of this perplexing question?

The time the injured man needs help is when the accident occurs, when his family requires assistance, and not after years of litigation. Litigation is most expensive to both employer and employee, and the majority of cases are taken on the part of the plaintiff by a lawyer on a contingent basis, so that even though a verdict is awarded in favor of the injured it has usually dwindled by the time it is received to less than 25 per cent of the actual money now so expended by employers of labor.

Again, it is an appalling fact that in America our ratio of accident and death in industrial employment is from two to five times as great as in countries abroad. It is reasonable to assume that workmen's compensation acts in general operation in America would result in manufacturers using more care to place in operation accident preventive devices and protection of all kind in their shops and factories. Many employers would naturally insure, as they do now, and their rate of insurance would unquestionably be computed just as is fire insurance, the care and attention they give to details reducing the risk. All this would naturally tend to reduce the ratio of accident and, after all is said and done, there is nothing so important in the consideration of this great question as, first, to reduce, if possible, this terrible cost, now charged to American industrial life.

Compensation laws must necessarily have the effect of reducing the friction and combat between employer and employee. To-day, when an accident occurs, it means, in many cases, a legal contest for damages. With an automatic compensation act this friction and antagonism is eliminated and industrial life is thereby vastly benefited.

The law's delay is another of the penalties of the present litigating system, and particularly important is the prevention of this terrific waste. It has been conclusively demonstrated that, of the millions of dollars now paid by employers for insurance against accident, in the final analysis only 25 per cent of the money the employer does so expend goes to the injured man. Statistics also prove that the injured workman receives a verdict in an average of only one case in ten.

With a compensation act in force every one of these ten workmen will receive something, unless the injury was inflicted either wilfully or through intoxication. It is true, of course, that the amount paid for each injury is in many cases less than what might be received through a court verdict; but, when the economic waste is all deducted, the net compensation to the injured will undoubtedly be greater under a modest compensation act than under the present system. Besides all antagonism and litigation will be forever removed. Surely all these indisputable facts must demonstrate to an aroused American public that the old common law theory of employers' liability, from every standpoint, is incorrect.

In our act, as is generally known, we have covered all industries. We could not reconcile ourselves to the fact that a man injured in a most hazardous trade was entitled to compensation from his employer, any more than would be a farm laborer who might have fallen from the threshing machine, or undergone any accident that might occur in ordinary employments, of whatever nature his pursuit might be. We have included every type of employment. We have been criticised somewhat, because of the domestic servant; why we should include domestic servants. Our answer to that has been, "What will the average housewife, or head of any house, do for his servant who had fallen down the steps or burned her hand?" He would naturally take care of such servant anyhow, sending her to the hospital, etc., which he would do without any law, and more than this law requires.

Let our efforts to obtain a remedy be exerted for the enactment of automatic compensation laws and our courts will be relieved; fewer accidents will result; antagonism that destroys discipline between master and servant will be largely removed; every injured employee will receive proper immediate relief and ultimately the burden will be equitably borne by the consumer who, in the final analysis should pay the whole cost of production, be it wear and tear on machinery or the seemingly necessary contribution of life and limb to industrial accomplishment and development.

We in New Jersey have taken a determined stand among the states on this subject, and we feel proud of the position that we are now occupying.

RECENT NEW YORK LEGISLATION UPON WORKMEN'S COMPENSATION

BY JOSEPH P. COTTON, JR.,
Counsel New York Commission on Employers' Liability.

Up to within a week or so ago very few of us knew much about the constitutionality of workmen's compensation laws in the United States, or how far some admirable systems of caring for work accidents in use in Europe were open to us. Now, I am sorry to say, we know more, and it is not altogether to our liking.

The New York Court of Appeals has recently declared unconstitutional an act passed in New York, in 1910, on the recommendation of a legislative commission which had given some study to the question. There have been several suggestions for such laws in other states, but, speaking generally, this New York act was the first law in the United States which created a compulsory system of workmen's compensation. It applied to a very few dangerous industries, but gave to the workman injured through fault of the employer or by trade risks a choice of proceeding (1) under his previous existing legal rights—i. e., by a law suit with all the chances and defenses that entails, or (2) a right to be paid compensation of half wages, but not more than \$10 per week, during disability for not more than eight years, and in case of death three years' wages to go to dependents. Practically, the new right by the New York Act of 1910 was about like the right given under the English Workmen's Compensation Act of 1897, save that in New York there were many limitations more favorable to the employer, though the sums paid were higher. Under the New York act if the injured workman chose to sue at law he could not later get compensation and *vice versa*. If he chose to sue at law the employer had all the historic defenses, if he chose to claim compensation the employer was to have practically no defense save serious and wilful misconduct by the injured workman.

It is this act which is now held unconstitutional. The ground upon which the Court of Appeals puts its decision I understand to be substantially as follows: This act allows an injured workman

to recover for damage caused by the trade risks of certain dangerous employments and, therefore, under it, the workman can recover for an injury which the master could not have avoided in any way. Or, to phrase their reasoning differently, this act places liability upon the employer not only to pay the workman for all acts caused by the employer's negligence, but also to pay for injury to the workman who was unlucky enough to get hurt by the trade risk, which is nobody's fault. Such a statute, say the Court of Appeals, violates our fundamental law, in that it takes property without "due process of law," and so violates the state, as well as the federal, constitution,¹ since it places on the employer a liability to pay money when he has transgressed no legal rule of conduct.

When the New York Commission framed this law they realized the probability of this objection, and the decision of the Court of Appeals does not come as a surprise, although we hoped for less technical reasoning. It is a fair inference from the opinion of the Court of Appeals that though they believe the statute unconstitutional, they concede the evils of the present liability system and seem to think that the statute might well have been highly beneficial to society.

Nevertheless, I venture the opinion that their decision is most unfortunate. Even a defeated lawyer can, I think, say that with all propriety.

The decision is not one that should let loose any rant about "recall" of the judiciary and "thwarting the will of the people." It is true that the statute which a few reformers got through the legislature has been overthrown, but it is absurd to say that there is any general demand or outcry of the people of New York for workmen's compensation, even among workingmen, though organized labor officially approved this law and urged its passage. Outside of meetings like this, the question was never heard of by the New York public before 1910. The statute was passed as an experiment in government, a legitimate and proper experiment, as to the constitutionality of which there has always been a good deal of doubt. We must freely admit that the statute went counter to prejudices and traditions long current and long cherished in this country, particularly in the legal profession.

In another connection, Mr. Arthur Benson has said:

¹The phrase "due process of law" is identical in both.

One does not want life to be overwhelmed in a rush of fluid and hasty experiments. Toryism is not only the drag upon the wheel, it is the caution and prudence that annihilates hasty and sentimental theories. Justice is not done by trampling on prejudices and flouting traditions, but by recognizing the needs and the aims which they express. Little happy and solid work can be done under a sense of general insecurity, and in guarding against anarchy much genuine and fruitful eagerness must be sacrificed.

And so, in the fine phrase of Mr. Benson, our New York statute for workmen's compensation is the "genuine and fruitful eagerness" that has been sacrificed, and the decision must not one whit change our regard for the great bench of the New York Court of Appeals, if they are great tories, they are also great lawyers. For us who believe in replacing the American system of accident litigation by some system which shall insure prompt and efficient provision for those injured by industrial accident, the fundamental problems are still the same after that decision; the question is still, What system is wisest? How can we accomplish it? For any man who believes that the problem is a simple one, that it is a mere question of educating the masses to overwhelm the classes by the ballot, and insist on the right of the numerical majority—for that man I have no more sympathy than for the chronic tory who is a mere drag upon the wheel of progress. He is an equally unsafe adviser. Rather the problem is how to replace our accident system by another and a better, in such a way that the doing of it shall not too far awaken the fears and sense of insecurity which the tories feel in each change of the traditions of government or each new governmental interference in industrial matters and the relation of labor and capital.

How far, for instance, can we go under our present form of laws and constitutions, as interpreted by the Court of Appeals in New York, in reaching what we desire? Under that opinion, as I read it, there are practically no limits, save reasonableness, placed upon the power of a state to pass statutes which shall place upon employers the fullest obligation to take care to protect the lives of workmen—for instance, to fence machinery. Nor does that decision, as I read it, limit the power of the state to allow optional compensation plans for accident relief, i. e., to allow the employer and workmen to contract as to the methods of handling work accidents and their compensation.

There is much to be said for an optional system of caring for work accidents. It is consonant with the tory ideas of individual rights and theoretical freedom of contract and the whole political philosophy that, long dead, has been embalmed in our written constitutions. It is admirably suited to industries in which there is small risk of accident or in unorganized industries where the employers still stand in a patriarchal relation to their workmen. It is suited, again, to the richer and larger corporations of great strength who are able to offer their workmen exceptionally large rewards. It once seemed in a fair way to work well on the railroads. But it must be admitted that, with the present disposition of the labor unions, it gives little promise of successful working where the unions are strong, where the workmen are foreigners or very ignorant, and more important, it is particularly unsuited to smaller manufacturing concerns which cannot carry their own risks, but must cover them by insurance. Optional compensation then, while it may increase in efficiency, and wherever it applies is valuable, seems to give little promise of solving the whole problem; just because it is optional, and so long as it is so, is likely to be expensive. It is notable that in the only state (Massachusetts) in which a statute permitting it has been in force for any length of time, no one has taken advantage of it, and in New York, which has had a law permitting it since 1910, the workmen of only one concern have taken advantage of it. On the other hand, certain of the larger corporations, like the United States Steel Company and the International Harvester Company, have practically conquered their work accident litigation troubles by private optional plans which, in theory at least, entail no compulsion on the workmen, and under which the workmen retain all rights to sue at law.

The Court of Appeals decision leaves open another way of solving this problem, i. e., by increasing the penalties for negligence resting on the employer. That is, under the decision of the Court of Appeals any statute may be passed taking away the employer's defenses, for instance, making the employer responsible for all acts of the fellow servant, or doing away with the doctrine of contributory negligence. In other words, the Court of Appeals would sustain almost any liability act as long as it is based on fault of the employer. There can be no substantial doubt that such statutes would be constitutional. But it seems equally clear that such statutes would

be of little value. They still leave the problem of the accidents to the slow processes of jury trials with all the mystical and maddening legal rules of evidence, their unfortunate delays, and their lottery of high verdicts, they still leave the workman injured in employment by the risks of his trade without a remedy, and such laws leave work accidents dealt with by the law as if they were personal torts instead of social calamities. Such laws raise liability insurance rates by leaps and bounds and leave the final solution of our difficulty farther off than ever. In states like Pennsylvania, where the master's defenses are pure relics of the laws of the last century, some change may be advisable, if it be only to wake employers up and give the workmen some idea that the law sometimes turns in their favor, but no real relief is obtainable in that direction, and the decision of the Court of Appeals is most unfortunate in that it fairly invites such laws.

It has been suggested, originally in Wisconsin and Illinois, that the liability laws may be changed in favor of the workman, but made to apply only to those employers who do not offer compensation to their workmen. Such was the New York optional law of 1910. And in New Jersey there is a bill just passed which, in effect, takes away all the employer's legal defenses (fellow servant, assumption of risk and contributory negligence), but provides that it shall apply to those who consent to it, and then disingenuously provides that all employers and workmen who do not give notice in writing of their dissent shall be presumed to have assented to it. These schemes and their variations are known as persuasive methods of getting compensation. They go on the principle of making the liability laws so hard on employer and workmen if they do not agree to compensation that they will be obliged to take it.

As to the constitutionality of such plans there is a good deal of doubt. The New York Court of Appeals decision throws no light upon the question. I believe they are constitutional in every state, but my perspective on these legal questions may be blurred, and I conceive the tory point of view only imaginatively. The main difficulty with such schemes, I think, is rather that they are complicated, that they are expensive because they are always uncertain, and do not lend themselves at all to insurance. Persuasive schemes of compensation are really elective schemes. They have the same evil, i. e., that they are not compulsory, they have a new evil that

to the ordinary manufacturer who carries insurance they are unduly complicated and expensive, and where they do not work they have all the evils of our worst liability laws.

The Court of Appeals also leaves open one further loophole for change under our existing constitutions along the lines we wish to go. It is suggested in an opinion of Cullen and Bartlett, Justices, in this recent case, that while the New York act is unconstitutional, the legislature is bound by no constitutional restriction in revoking corporate charters, and that, therefore, the State of New York may to-morrow revoke practically every corporate charter in the state and give them back only to those corporations who accept this unconstitutional act. No reformer ever dealt so foul a blow at the tory shrine of vested rights, or forged more splendidly a weapon at corporate aggression. But that plan does not, I think, lend itself to our purpose. The object of this reform is not to humble or cramp corporate business. Such a remedy should be the last weapon against corporate greed or monopoly. If in truth, as the Court of Appeals say, the fundamental ideas of the law of negligence are intended to be embalmed in the constitution, we would not wish to impeach the corporations to take away their privileges.

So we are driven to the other and final recourse, the amendment of state constitutions. It is unwise to let the proletariat get too intimate with our state constitutions—speaking generally, the less we do to them the better. There is so much in them now that they are checks without being balances. True, the tory is aroused at once when we approach the constitution; this is the place where a fugitive before the march of change has been wont to claim sanctuary. What can be said to him? How can we pacify him? We can say to him truthfully, I think, that a compulsory system of workmen's compensation based solidly on a constitution will not mean more expense to industry than now exists in states like New York where there is a severe employers' liability law, that under such a system society will find the victims of accident promptly cared for, that one source of friction between employer and employed can be lessened, can be taken out of the list of class grievances, that under such a system liability insurance will become not what it is now, a hateful thing, but, like well-run life insurance, a beneficent thing. We must explain to our tory friend over again the new secret of corporate success, that the only course which is fatal to him is to

fight with public opinion and lose. By this faintly subtle argument we will lead up with our friend the tory to the moment when we lay before him a suggestion for amendment to our state constitution which, perchance, shall read thus:

The legislature may impose such reasonable conditions on any contracts of hiring or employment as shall be designed to guard or produce the health or safety or well-being of any of the parties thereto or the public, or to make provision for the payment to the employer or those dependent on him of the financial loss caused by accidents or disability in such employment.

And we will explain to our tory friend that this amendment will save for him his sanctuary, the courts, in their legitimate and wiser function; that is, as elder statesmen, who shall guard against the mob, anarchy, folly, hysteria and newspaper rule; and if all that is not true for him, it will be for his children if they, too, are tories.

In this plan, this scheme for conversion of the tory, I have not spoken of the Fourteenth Amendment to the Constitution of the United States, which insures to each of us that no state shall deprive us of life, liberty or property without due process of law. The intimation of the Court of Appeals of New York in the opinion of which I have been speaking is, that this clause would be violated by any state statute or constitutional amendment to a state constitution such as I have outlined. Their fundamental conception is that liability may not be imposed on A to pay B, save where A fails to observe some standard of duty set up by the law. With all respect, I cannot believe that principle so deep-rooted or fundamental in our system of government that it is not competent for a state, by its constitution, to declare that it will no longer treat an industrial accident as a tort, but will regard it as a social calamity resulting from the contract of hiring. When that question comes before the Supreme Court of the United States, if it arises as to the validity of a state constitution, the argument will, I believe, prevail that such an amendment is "due process of law," when, by experience, it is clear that the bulk of industrial accidents are the inevitable results of modern industrial methods, that they bear little relation to fault of workmen or employer, save as fault is common to all ordinary men, and that the old common law method of considering these accidents as torts or wrongs leads to endless and unsatisfactory litigation—when those facts are clear, the Supreme Court of the United States will, I believe, decide that it is due process of law

for a state to require, at least in those trades where danger of accident by the trade risk is great, that adequate provision be made for those injured in that industry. Whether that burden shall rest on the employer or upon both employer and workman is not at the moment important, the important point is that the state has the power to regulate conditions of relief from accident, exactly as well as to prevent accident. It is all a question of the wisdom of state regulation of the contract of employment, the relation of labor and capital, and I do not believe there is any restraint of such regulation under the Federal Constitution while it stops short of folly. If such regulation is not possible, then our government is indeed handicapped.

If I am wrong, there is no way to solve this problem of American work accidents immediately and simply, or in two decades. A compulsory system of work accident relief with or without contribution by workmen bids fair to solve the accident problem and the accident litigation problem as well. Any other method less simple must be worked out, with great difficulty, and great friction, political and social.

WORKMEN'S COMPENSATION AND THE INDUSTRIES OF MASSACHUSETTS

BY JAMES A. LOWELL,

Chairman Massachusetts Commission on Employers' Liability and Workmen's Compensation.

Massachusetts is different from other states in that its industries are almost entirely of the kind known as the light trades. We have no mines in Massachusetts, and the heavier trades, such as the building of big bridges and things of that kind, we have very little of. Our state is a manufacturing state, and the cotton and woolen mills are the principal parts of the industry. The cotton and woolen industry takes up about fifty-one per cent of the number of employees in the state, and, if we add to that light manufacturing, it brings it up to sixty-five per cent. In order to have a workmen's compensation act, state insurance act, any kind of an act, one must cover not only the hazardous trades covered in the New York bill, but one must cover every trade, the cotton, woolen and silk manufacture, and also other manufactures that are not extra-hazardous. We cannot pick out one, two, three, seven or eight industries, and call them hazardous. We must pass a law that will cover accidents in all industries. The bill which we did not report to the legislators, because we were not entirely satisfied with it, but the bill which we called our tentative act, and on which we had several hearings, was a measure of that character.

Everyone in Massachusetts agrees that the present law is bad, and I shall merely state two or three of the bad objections to it. The first and the worst feature of it, from the point of view of economy, at least, is that under the present law, as all laws in the United States, you cannot get anywhere without a law suit, and that fact brings into prominence the fact that the money paid out by the employer of labor is three-fourths of it wasted in law suits. I am a lawyer, and perhaps should not talk against my own trade. Of course, that kind of an act in Massachusetts is very good for me, but it is not good for anyone else. It wastes seventy-five cents for every twenty-five cents that gets to the person who ought to

get one hundred cents, or at least ninety cents. You must have a law which will take one hundred cents from the employer and get just as many as possible of the one hundred cents to the employees, without their being wasted in expenses of various kinds.

The act which we proposed was one covering all employments where there were more than four regular employees. It did away with our present Employers' Liability Act and substituted in its place a workmen's compensation act. It left our common law in force, the reason being largely that it was thought necessary for legal reasons to leave it, but the bill provided—and I think the provision a very important one, although I have not heard emphasis put upon it—that the payments to be made should be equal payments of a certain percentage of the wages; fifty per cent we took. We think that a fair way of dividing it up, because it divides the loss between the employer and employee. The employer pays fifty per cent and the employees contribute their loss of wages, and pain and suffering. That is the nearest to justice, it seems to me, that we can get. We put in the requirement that it should be paid weekly, for two reasons. The first reason was that we think there would be a great many cases in which the immediate payment of say \$2000 in one lump sum would cause the recipient to squander the money. Another reason for paying in dribs and drabs, so to speak, is that the unscrupulous lawyer should not have anything to get too large a payment from. The reason lawyers take cases under the present law, the reason for ambulance chasers, is that there is a possibility of recovery in some cases of \$10,000, and a possibility for the lawyer to make a charge of from \$2,000 to \$2,500, a glittering prize in the eyes of unscrupulous men.

The law we proposed left a two weeks' waiting period, and we gathered certain statistics of accidents which happened during a ten weeks' period of the last year. We have not, of course, statistics of sufficient number and duration to make a foundation for scientific theory, but they show that all but about twelve per cent of the injuries which occurred during that period lasted less than two weeks. That shows two things; that by far the larger proportion of injuries are not serious, and that a new law will not be so expensive as many people have feared. In Massachusetts, the principal difficulty the commission had and still has, is in forming some guess as to what a proper law will cost. I am talking about

this from the standpoint of the business man. Many of the people have talked about workingmen's compensation in a way which, as chairman of a commission, I should call a little sentimental. It is said the present law is bad, let us have a new one, we do not care what it costs. I am sorry to say that a commission cannot go about it in that way, much as it may desire.

We were brought up against the argument that if we add to the cost of our industries, we cannot compete with the mills of Rhode Island. In order to find out what the cost of the present system was, we got returns from employers of labor during the year 1909, and we found, much to our surprise, that the insurance cost was a certain amount, and that the employers who had insured, also paid out for employees—for claims which employees made, which were not covered by the policy, money for hospitals and that sort of thing—a sum amounting to eighty-five per cent more; so that the employers' total liability cost in Massachusetts is almost double what the mere insurance cost is. Then we came to the conclusion that it was very probable that a new law which did away with a large part of the present litigation, would cost the manufacturers of Massachusetts very little more than twice what they are spending for insurance under the present law.

I want to say a word about the outlook in Massachusetts. In New York everyone is despondent. I am courageous enough to think that we need not be disheartened by the decision of the Court of Appeals in New York. I think that the way the courts of Massachusetts have treated laws looking toward the amelioration of the condition of labor, shows that they very likely would not follow the New York decision. We in Massachusetts look forward confidently to getting some kind of a law, either a workmen's compensation law, or insurance law, which will do away with the present evils without crippling the industries of the state.

ATTITUDE OF FOREIGN COUNTRIES TOWARD LIABILITY AND COMPENSATION

BY LEE K. FRANKEL, PH.D.,
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It would be idle at this late date to attempt to present in detail the facts in connection with European legislation concerning accident liability and workmen's compensation. The United States Government in various reports has presented in full the laws in various foreign countries dealing with these important topics. Text-books and magazine articles, which have appeared from time to time, amply cover the subject and give fully the basic information necessary for the comprehensive understanding of the attitude in Europe.

All that can be attempted at this time is a presentation of the philosophy of the movement in Europe, which has been going on for over twenty-five years, and which even to-day is in an embryonic state in several countries. In fact, a study of the laws themselves would be apt to lead the student astray. One might be apt to conclude that there is no consensus of opinion regarding the final development of legislation, and that some of the chaos existing in the United States is still to be found across the ocean.

This, however, is not the case. A clear conception of what Europe stands for in the matter of legislation regarding accident liability and workmen's compensation is to be gathered from the proceedings of the various International Congresses on Social Insurance, which have been held during the last twenty-five years. In fact, the change of name in this organization indicates to some extent the general trend of legislation and of the wishes and desires of those who are sponsors for it. Originally, the congress was called the International Congress on Work Accidents. To-day the term, "International Congress on Social Insurance," more aptly expresses the purposes and aims for which the congress stands.

In substance, the underlying principles of legislation, as exemplified in Germany and to lesser extent in other countries, assume that the American doctrine of liability is false. While this doctrine

may have been valid at earlier times, to-day under the complex forms in which industry is found, it is not only unwise but unjust to hold the workman responsible for accidents which may occur to him, on the assumption that he is a free agent and has the right of choice in his work. European legislation has taken the entirely contrary attitude of assuming that accidents in the majority are traceable to causes inherent in industry, and that as a result industry should be held responsible for them. It is immaterial whether this conception has been extended to the ultimate thought of holding industry responsible for all accidents, or, for a limited number, as is the case in certain countries, where deliberate negligence on the part of the workman absolves the employer from liability. The vital thought to be brought out here is the recognition, not of liability on the part of either the employer or employee, but rather the more progressive concept that since accidents do occur and may continue to occur, notwithstanding all provisions for safeguarding, the doctrine of compensation should be established. In the last analysis this means that the consumer shall bear the burden.

Nor is it vital for the acceptance of this doctrine that the theory of compulsory compensation shall be introduced. While the recent decision of the Court of Appeals of New York proclaims with emphasis the mature deliberation of a unanimous court, that under our constitutional provisions any attempt at compulsory compensation infringes on the right accorded to individuals under the Constitution, that property may not be taken from them without due process of law, it does not follow that the conception of a compulsory principle may not voluntarily be assumed by industry. In fact, it seems evident that if this far-reaching decision of the Court of Appeals will hold, enlightened manufacturers will realize not only the desirability, but the necessity of making provision for indemnifying employees, who may become injured in the pursuit of their employment. This tendency is already apparent in many states and in many industries, and its growth is only a matter of time.

On the assumption that compensation is the logical development, in preference to the older theory of liability which, *per se*, involves a suggestion of tort, it follows that in granting compensation, a second principle suggests itself. This, too, has been exemplified in the main in European legislation. I refer to the granting in cases of accidents not to a lump sum compensation, but rather to the

provision which has been made in many instances for the care of the injured workmen during illness attending accident or for the granting of an invalidity pension should the injuries from the accident become permanent. This thought has been carried to its highest conclusion in Germany, where the principle of pension has been extended not only to the permanently injured workmen, but to the granting of pensions to the widow and orphans in case of the death of the workman resulting from injury.

The purpose of this provision is clear. The old liability theory assumes the necessity for indemnity, and as a result in the past this indemnity has been measured on a money basis. The compensation theory, on the other hand, while it involves a theory or principle of indemnity, adds a finer, better principle, namely: that of replacement. In other words, it is the intent of legislation of this kind not merely to give to dependents a cash consideration for the loss which has been suffered in the maiming or death of one who is frequently the principal wage-earner, but rather to attempt to replace in the family the earning ability, which, under normal circumstances, would probably have been continued for an indefinite period.

The question will naturally arise: Can the cost of such permanent or continuous pensions be borne by the individual employer? The answer can be made off-hand in the negative. Realizing this, however, it has been the effort on the part of European legislation to provide for the regular and continuous payments of pensions, by requiring the employer to guarantee payments through some insurance provision. The weakness of some of the legislation proposed in the United States and the weakness of the English legislation may, in part, be traced to the absence of such provisions. Accident, like death, may be looked upon as a contingency and risk of life, and its frequency may to-day be measured in terms of actual experience. While the laws, which govern accident, cannot be estimated with the finality which underlies the laws of a mortality table, nevertheless there is sufficient statistical data to estimate with a fair degree of accuracy the costs of accidents upon which insurance rates can be based. If proper protection is to be given not only to the workman but to the employer, any sane scheme of compensation should have attached to it an insurance provision.

Still another thought is characteristic of most foreign legislation. It is mentioned here for the reason that it has not received

definite acceptance either in England or in the United States. I refer to the belief that if industry is to be held liable for accidents, with possibly certain limited exceptions, then the amount of such liability likewise must be limited. Any well-grounded compensation scheme must assume in advance that industry cannot be subjected either to the whims of juries or to sentimental considerations. All that industry should be expected to do is conveyed in the thought outlined above, namely: to attempt to replace for definite periods of time, at least in part, the contribution which the injured workman would have made for the support of his family. These amounts, since they are based on wages, can be definitely calculated and form part of any well-planned insurance scheme.

Finally, it should be distinctly recognized in the United States that compensation for accidents is only one phase of a broader and larger movement directed towards the protection of workmen against the risks of industry. Industrial accidents have been given prominence in legislation of all countries, for the reason that they are sudden and that their immediate effects are frequently serious. It will probably be demonstrated eventually, as a matter of fact, that the other risks to which industry subjects workmen are equally as serious and probably affect larger numbers of workmen. It is recognized to-day, equally in Europe and to a lesser extent and more recently in the United States, that many diseases are the result of bad industrial conditions or to the strain and tension to which workmen are subjected. Similarly, the disability of workmen occurring prematurely, long before they have reached the allotted three score and ten, can be traced to the effects of long hours of employment, overwork, strain, etc. Here, too, foreign legislation has taken the attitude that protection should be given to workmen against these contingencies. It should be mentioned here again that this protection need not necessarily convey any idea of liability on the part of the employer or of the industry. Instead, there is the general assumption that there are risks and contingencies which arise in industry and against which the individual workman deserves protection.

It is only a further extension of this thought to maintain that since the individual workman himself is really not in a position to protect himself, the greater part, if not all of the burden, should be borne by the employer—or, even as the thought is extended in

certain countries, that the state, as a matter of wise public policy, might assume a portion of this obligation.

I think it necessary that this idea should be strongly emphasized here, if we are to develop accident legislation in the United States along safe lines. If we are to benefit by the experience of our foreign neighbors, we must agree with them that we have only partially done our duty in making provision for workmen against industrial accidents. A comprehensive scheme of insurance for workingmen must include insurance against sickness, against temporary or permanent invalidity and against death. To what extent industry shall be chargeable with the cost of this protection, what amount the employee should pay and whether the state should or should not be one of the contributing parties, is immaterial for this discussion. It is, however, essential that we shall recognize at the outset of all attempts to bring about a change of affairs in our state legislation, the fundamental principles above adverted to. When these are clearly recognized and understood, it should in time be possible to effect rational and even uniform legislation, which shall not be in conflict with our constitutional provisions. When it appears probable that there is a unanimity and consensus of opinion as to the introduction of these fundamental principles into our legislation, it will probably be a comparatively simple matter, should it be necessary, and this is still in doubt, to amend the constitutional provisions which to-day apparently stand in the way of legislation. This thought, we believe, crystallizes the opinion of modern men and women on the question of necessary protection for those who prosecute the industries of this country.

RECENT PROGRESS IN EUROPEAN COUNTRIES IN WORKMEN'S COMPENSATION.

By HENRY J. HARRIS, PH.D.,
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The most conspicuous feature of the continental legislation relating to compensation for industrial accidents has been its frequent change to adapt it to the changes in industrial organization which the development of the last century has brought about. Thus at the close of the Napoleonic wars, or approximately 100 years ago, we find in continental Europe two industries in which the ordinary rules of the liability of the employer for injuries to his workmen did not apply; these were navigation and mining. In both of them the employer was required to provide for accidental injuries on a different and more liberal scale than prevailed in other lines of employment. Mining and navigation possess two characteristics which distinguish them from other industries; in the first place, they are naturally hazardous, and second, the safety of the employee depends to an unusual degree on the skill and care of the one directing the work and on the skill and care of his fellow workmen. These two industries are among the first examples of large-scale industries to be developed, and it is worthy of note that the leading nations of Europe found it necessary to modify the ordinary doctrines of employers' liability and to devise special legal institutions to provide for the conditions peculiar to those industries. It should also be noted that in mining and navigation the injured employee was not required to bring suit in a court of law to obtain the compensation for his injury, but the law required the owner of the undertaking to provide in advance a special fund from which the benefits for this purpose were paid. Thus, even at the beginning of the modern industrial era, the rules at present regulating the liability of the employer in the United States had already been found inadequate in two important industries in Europe and a crude system of accident insurance had been substituted.

In the thirties a new industry—perhaps the most important of modern power-using industries—was created, namely, the railroad

industry. It likewise possessed the characteristics of a high trade risk and the dependence of the employee on the skill and care of the one directing the work and of the fellow workman. The problem of the injured workman came up at once and Prussia cut the Gordian knot by enacting its law of 1838, which put the employee in practically the same position as the passenger as far as damages for injuries were concerned; to provide the compensation called for under this law, the railroads promptly created insurance or relief funds modeled after the miners' funds. Thus, in a third large-scale industry the liability rules were found wanting and were discarded for a form of insurance. Other states on the continent of Europe also modified the liability doctrine to fit conditions in the railroad industry, but in marked contrast, both England and the United States retained the old liability rules.

The next break with the old liability rules came after the factory system began to spread over the continent, or in other words as soon as large-scale industries began to be frequent. The first instance came late in the sixties and early in the seventies when three states, Bavaria, Baden, and Württemberg authorized local governments to make deductions from the earnings of factory employees and similar workmen, to be paid into the local treasuries and used as an insurance or relief fund for the benefit of factory workmen who were disabled either by sickness or accident. As the deductions were small, they were in many cases paid by the employers instead of being taken from wages as the law permitted. While not as sharp a break with the liability traditions as the Prussian railroad law of 1838, it was nevertheless a recognition of the failure of the liability principles to meet the needs of the newer industrial conditions.

The importance attached to this subject is shown by the fact that one of the first laws enacted by the newly created empire of Germany was the liability law of 1871; this admirable piece of legislation is still in force and probably represents the highest development of the method of compensating industrial accidents on the basis of fault. Ten years' experience under this law was sufficient however to convince both employers and workmen that legislation which made the granting of compensation dependent on the proof of negligence would do no more than serve as a background for a system adapted to the industrial conditions of the time. The prob-

lem became particularly urgent in Germany about 1880, because the increasing cost of living at that time made the additional burden of carrying the cost of the accidents a matter of serious importance to the workmen. In passing, it may be remarked that relieving the workmen of the cost of carrying disability caused by accidents is one method of decreasing the cost of living, and if the cost of the accidents is defrayed by a system of insurance at the expense of the consumers the advantages are proportionately increased because of the extremely small amount borne by each person taxed.

The experience of the mining and railway funds provided the German investigators with a basis on which to found their new system of accident relief. The laws of Germany providing for the national compulsory sickness and accident systems were enacted in the early eighties and since then the leading industrial countries of the continent have been following the example of the Germans. The importance of the subject of social insurance is best indicated by the fact that in practically every year since 1883, the imperial legislature of Germany has had some phase of this subject under discussion.

It is worth while to repeat this phase of European experience since it emphasizes two points; first, that the plan of compensating industrial accidents by determining who was at fault and assessing the cost on the negligent party, has never applied to all industries, and in fact has long been discarded in those industries which most closely resemble the industries of the present day; second, that every system of accident compensation which has yet been devised needs constant revision in order to be adjusted to the changing methods of conducting industries under modern conditions. The same is true of course of other industrial legislation. The decisions of American courts seem, in many instances, to assume that the negligence method of compensating accidents is essential to the maintenance of the existing social structure, and under this assumption the courts have applied the negligence rules without any modification to industries such as mining, with the resulting confusion and absurdities which have so frequently been pointed out in recent discussions.

As one state of the United States (Washington) has already adopted a system of government insurance, while two states (Montana and Maryland) have in operation compulsory insurance funds

for the mining industries, and it is believed that other states will eventually adopt the same plan, it will be of interest to mention the points on which special progress in Europe has been made in the last ten years.

Occupations. Since 1900, the most important advance in Europe has been the extension of the insurance to wider groups of employees. The usual plan has been to first include the industries with a high trade risk, and later to extend the list of industries. The British law of 1906 has gone farthest in this respect by including "any employment"; the French law includes the usual industries together with mercantile industries. In the important industrial countries the law now includes all the leading industries.

General administration. The most successful administration of the insurance laws has occurred in the countries where the interested parties, the employer and the workman, have an important part in enforcing the laws. Austria, Hungary, Luxemburg and Germany have placed the administration of the insurance laws in the hands of employers' associations, acting under the supervision of the government officials. In some countries boards or councils, which include employers and workmen, administer the government insurance banks, while in other countries permanent councils, including representatives of these two parties, keep in touch with the development of the movement and make recommendations for improvements.

Financial administration. Europe now offers us almost every conceivable method of providing workmen's insurance; Norway has a state insurance bank in which the employers are compelled to insure, in other words, a government monopoly; Great Britain permits the employer to insure or not, as he pleases, but if he desires to insure, the private companies are his only resource; Germany, Austria, and other countries compel those who pay for the insurance to provide it themselves on the mutual plan; in other countries we find a state institution offering insurance in competition with private insurance companies or with employers' mutual insurance societies. During the last ten years, the trend of opinion has been towards compulsory insurance in prescribed institutions. This movement towards compulsory insurance is based wholly on the desire to secure the safest and cheapest form of insurance; it is obvious that the best insurance results are obtained by including the

largest possible numbers, and compulsory insurance offers the only method of securing this result. It is now generally admitted that mutual organizations of the employers, such as the Austrian and German organizations, provide the most economical machinery for placing the accident relief in the hands of the injured persons. The least economical method is the plan of allowing the employer to insure in private insurance companies competing with each other, as is the case in Great Britain. Two forms of insurance may be differentiated, first compulsory, and second voluntary. On this basis, the plans in use in Europe at present are as follows:

I. *Compulsory Insurance*

Two forms of compulsory insurance are differentiated—compulsory insurance and compulsion to insure; one enforcing compulsory insurance in prescribed institutions, the other enforcing the obligation to insure, but leaving free the choice of the insurance institution.

A. Compulsory insurance in prescribed institutions.

1. In a government institution with a monopoly of insurance: Norway, one state insurance bureau for all industries.

This is the only country where the entire insurance is concentrated in one government office.

2. In employers' compulsory mutual associations, controlled by the state.

a. Organized on territorial lines.

(1) Luxemburg, one institution, for all industries.

(2) Hungary, two institutions—one for Hungary and one for Croatia-Slavonia, including all industries.

(3) Austria, seven institutions, the whole country being divided into seven districts for all industries, in addition to which there are separate institutions for railroads and mining.

b. Organized on industry lines.

(1) Germany, 66 industrial institutions, each covering the entire country for one group of industries, except that some industries have several associations, each covering a specified area; in addition there are 48 agricultural institutions.

(2) Greece and New South Wales, where the laws apply to mining only; each country has a special miners' fund.

B. Compulsory insurance with choice of insurance institutions.

1. Private companies or mutual associations with state institutions competing.

a. Italy has the National Industrial Accident Insurance Institution; except that for navigation and for the Sicilian sulphur mines, compulsory mutual associations have been created by special legislation.

b. Netherlands has the Royal Insurance Bank. The employers may insure in private insurance companies or may be permitted to carry their own insurance, but all compensation is paid by the Royal Insurance Bank which deals with the employer or insurance company.

2. Private companies or mutual associations without state institution competing.

Finland, except that for seamen a special compulsory employers' mutual association under strict government control has been established by special law.

II. *Voluntary Insurance*

A. Private companies or mutual associations with state institution competing.

1. Sweden, with State Insurance Institute.

2. France, with National Accident Insurance Fund, which, however, is not permitted to provide insurance against temporary disability. Compulsory insurance is provided for seamen in a special government institution.

B. Private companies or mutual associations without state competition.

1. Belgium, while the law specifies that the National Retirement Fund must provide accident insurance, this provision of the law has never been put into operation.

2. Denmark, where insurance is voluntary, except that the law requires compulsory insurance of seamen, either in mutual associations or in insurance companies, and where a state institution exists for voluntary insurance of fishermen and seamen not covered by the compulsory law.

3. Great Britain and the British colonies.
4. Russia, except for compulsory insurance of miners employed by the state or the Crown.
5. Spain.

Methods of guaranteeing insurance payments. Wherever there is compulsory insurance in prescribed institutions controlled by the state, there is, of course, no question as to the security of payments. Such is the case in Norway, where a government bureau provides the insurance. In Germany, Austria, Hungary, Luxemburg, and Netherlands the law either specifically states or implies the guarantee of the solvency of the institutions providing the insurance. In Netherlands the injured workman is protected by the equivalent of insurance in the Royal Insurance Bank, irrespective of the institution in which the employer carries the insurance; the uninsured employer and the private insurance companies are required to give satisfactory guarantees to the Royal Insurance Bank. In Greece the payments are guaranteed by the national miners' fund.

The second method of state guarantee is by a special national fund, from which the compensation is paid in cases of insolvency either of the employer or of the insurance carrier. The sources of revenue of these funds show considerable differences. In Italy, notwithstanding the system of compulsory insurance, a fund has been organized under the supervision of the Government Bank of Deposits and Loans; supported by fines for noncompliance with requirement to insure, or other fines, and by the compensation due in fatal cases but not paid because of absence of survivors. In France the guarantee fund is managed by the National Old Age Retirement Fund and is supported by special taxes upon all employers covered by the act, but this fund guarantees pension payments only while compensation for temporary disability is secured by a preferred claim on the assets of the employer. In Belgium the guarantee fund is managed by the National Retirement Fund and is supported by a tax levied only upon those employers who do not carry insurance.

Where no state guarantee exists guarantees must be exacted from insurance companies or from the individual employer. Wherever insurance is either voluntary or there is a choice of insurance institutions, the government protects the insured employee by requiring the insurance company to maintain proper reserves or to

make guarantee deposits with the government, or by both methods combined.

In the case of uninsured employees, their interests are usually protected by giving them a preferred claim upon the assets of the employer. In certain countries, where there is no compulsory insurance, the employer is not permitted to carry the liability for continuous payment of pensions in cases of death or permanent disability, but must provide for such payments through insurance institutions.

In Belgium both reserves and guarantee deposits are exacted; in addition the capitalized value of pensions must be deposited in the National Retirement Fund. There is, therefore, no necessity for giving the injured employee a preferred claim on the assets of the employer.

Finland requires the payment of the capitalized value of the pension to an insurance company in cases where no insurance has been taken. The guarantee of the pension payments of the uninsured employer is limited to a preferred claim upon his assets in case of insolvency in the following countries: Denmark, Great Britain, Russia, Sweden and the British colonies.

In Spain both reserves and deposits are required from insurance carriers, but in case of uninsured employers no especial provision is made in case of insolvency.¹

Information as to accidents. One of the very best things European experience has given us is accurate information as to the trade risk in the different industries and the causes and results of industrial accidents. The recent report of the German Imperial Insurance Office is a veritable mine of information in this field. Some of the facts brought out by this study of the industrial accidents compensated in the year 1907 are:²

The information relates only to serious industrial accidents, namely, those causing either disability lasting longer than thirteen weeks, or death, which were compensated in the year 1907. The much larger number of accidents causing disability of shorter duration is not included.

Expressed in terms of workmen who had been employed 300

¹See also Bulletin of the United States Bureau of Labor number 90, page 710 for further discussion of this point.

²See also "Industrial Accidents and Loss of Earning Power," by Henry J. Harris in Bulletin of the United States Bureau of Labor number 92.

days in the year, the number of persons included in this study was 8,600,000.

About one workman out of every 100 received injuries causing serious disability or death, the average rate being 9.44 per 1,000 full-time workmen.

In the period 1897 to 1907:

There has been a decrease in the rate for accidents causing death.

There has been a decrease in the rate for accidents causing total permanent disability.

There has been a decrease in the rate for accidents causing partial permanent disability.

There has been a marked increase in the rate for accidents causing temporary disability lasting longer than thirteen weeks.

Workmen employed in teaming, hauling, etc., have the highest accident rate; workmen engaged in the tobacco industry have the lowest accident rate.

Arranged in order, the highest coming first, the following ten industry groups show the highest accident rates: teaming and hauling, flour milling, mining, woodworking, brewing, engineering construction, inland navigation, iron and steel, express and storage, and the building trades.

Arranged in order, the lowest coming first, the following ten industry groups show the lowest accident rates: tobacco, clothing, textiles, printing, pottery, paper, glass, railways (private), chimney-sweeping, and marine navigation.

The accident rate for males is higher than the rate for females.

Injuries to workmen occur with some uniformity throughout the various months of the year, with a slightly higher rate in October.

Workmen are injured more frequently on Monday forenoon and Saturday afternoon than during the rest of the week.

Workmen are injured more frequently in the latter part of the forenoon and in the latter part of the afternoon than during the rest of the day.

Of the 81,248 workmen injured, about 5 per cent were injured during the first hour that they were at work, 8.6 per cent were injured during the second hour, 9.2 per cent during the third hour, 11.3 per cent during the fourth hour, and 12.2 per cent during the

fifth hour, the highest for the day; for the rest of the working day the percentage is irregular.

Workmen are injured most frequently by fractures, concussions, etc., and these injuries occur most frequently to the arms and legs.

Workmen are injured more frequently if they have been employed in an establishment for but a short period of time; considering only the first year of the workman's employment in an establishment, those employed a shorter period of time are injured more frequently than those employed for a longer period.

Workmen are injured more frequently if they have been employed in an occupation for but a short period of time; considering only the first year of the workman's employment in an occupation, those employed for a shorter period of time are injured more frequently than those employed for a longer period.

Workmen are injured most frequently by working machinery (presses, lathes, looms, etc.); arranged in order, the highest coming first, the five most frequent causes of injury are: first, working machinery; second, collapse, fall, etc., of materials; third, loading, unloading, etc.; fourth, falls, falling from ladders, stairs, etc.; and fifth, railway operation.

Workmen receive fatal injuries most frequently from the collapse, fall, etc., of materials; arranged in order, the highest coming first, the five most frequent causes of injury are: first, collapse, fall, etc., of materials; second, railway operation; third, falls, falling from ladders, stairs, etc.; fourth, inflammable, hot, or corrosive substances, etc.; and fifth, teaming, hauling, draying, etc.

Of the injured workmen sustaining serious injuries, about 50 per cent were still disabled to a greater or less extent at the end of five years.

Workmen injured by accidents due to the fault of fellow workmen formed 5.9 per cent, by accidents due to the fault of the employer 12.6 per cent, by accidents due to the general hazard of the industry 37.7 per cent, and by accidents due to their own fault 41.3 per cent of all the injured persons studied. During the period 1897 to 1907, the proportion of accidents due to the fault of the employer has decreased, that due to the hazard of the industry has decreased, while that due to the workmen's own fault and to the fault of fellow workmen has increased.

Progress in medical treatment. One of the best features of the European experience is the demonstration that by a comprehensive plan of medical treatment, many injuries which were formerly classed as permanent disabilities, may be removed and the earning capacity of the injured person restored. In Germany special institutions for the treatment of industrial accidents have had remarkable success in removing disabilities which have heretofore been regarded as permanent disabilities. Experience has shown that where life pensions for injuries are paid, the insurance administration must adopt aggressive measures for the treatment of the injured. The lack of knowledge on the part of the workmen, the inexperience of many surgeons in general practice and it must be admitted, the occasional unwillingness of the injured person himself, makes it not only advisable, but imperative that ample control over the medical treatment of injured persons be placed in the hands of the insurance authorities.

Forms of disability other than accidental injuries. That the risks of modern industry cannot be entirely included under the term accident has been clearly shown by recent experience. This is well known in the case of workmen who handle such substances as lead, arsenic, hides which produce anthrax, as well as other well-known occupational diseases. Other forms of disablement due to the occupation come more slowly but cause disability no less severe than an accident. The glass and the metal grinder for instance, have death rates from lung affections much in excess of the average rate. The trade life of the miner for instance is comparatively short and the exhaustion of his working ability comes much earlier than in the case of the average workman. The cost of these disablements is an expense which Austria, France and Germany charge on the industry, although the workman and the state also contribute. In Great Britain, the disabilities due to a specified list of occupational diseases are included under accidents entitled to compensation.

ENTERPRISE LIABILITY FOR INDUSTRIAL INJURIES

BY CHARLES HERBERT SWAN, BOSTON,
Delegate from Massachusetts to the Annual Meeting of the American
Academy, April 7 and 8, 1911.

The most interesting feature of this meeting of the American Academy of Political and Social Science has been the very general agreement upon the utterly unsatisfactory character of the existing laws for employers' liability. Three ideas in this connection stand out very clearly in the discussion:

First. That the inherent defect of the existing remedies for industrial injuries is that the relief is given as a personal liability founded upon the idea of wrong done by the employer or implied in the negligence of his agents. One of the speakers from the floor called attention especially to this defect as having been recognized by the New York commission, which, nevertheless, started from the same point of personal liability in the act that was declared unconstitutional by the Court of Appeals of New York state. The same point of departure appears also in the New Jersey statute recently enacted. In this plan the statute removes important defenses of the present law, but does so as an inducement for employers to agree to a schedule of compensation, which would supposedly be less burdensome than the amended liability to damages after the restriction of defenses hitherto allowed.

Second. The constitutional difficulty appears, as it met and overthrew the New York statute in the Court of Appeals. It is likely to encounter any statute that is based upon the idea of imposing a personal liability in cases where there is no really wrongful act or omission of the personal defendant or his agent. What the injured workman really wants is neither charity nor mere damages for a supposed wrongful act, but relief in case of injury in his employment whether or not any person in particular is at fault. It is at least open to question whether the New Jersey act, even if constitutional, is a worthy method of handling the problem by enacting a liability, which on the theory of liability between individuals is merely an unjust reversal of present injustice in select-

ing the party to bear the "assumption of risk," etc., and particularly in enacting such liability in order to induce employers to agree to a schedule of compensation, which however wise on the average is arbitrary in a particular case, and further to agree to apply that schedule in cases where it would probably be unconstitutional as an original act, as in New York. The New Jersey statute may work well enough as a rule of thumb for "Jersey justice," but it contains a dangerous precedent.

Third. The insurance features to be considered were strongly emphasized as essential elements of the problem, and in particular the utter disproportion between the amounts paid out by employers on account of the present liability laws, and the amounts which actually find their way into the hands of the needy recipients. The establishment of some sort of insurance fund seems to be the necessary corollary of any scheme for a regular schedule of relief; and the economy of some plan of mutual insurance among groups of interested parties, with careful supervision, and attention to safety devices, was indicated by several speakers.

In order that a state may justly and reasonably compel or induce groups of private parties to enter into schemes of mutual insurance there must be discovered some right to be conserved, other than the mere arbitrary decree of personal liability in the absence of wrongful acts. Also the creation of a fund for the systematic relief of injuries may help us over the constitutional difficulty of taking property upon an arbitrary schedule. It may thus keep us from trying to do a good thing in a bad way, or from doing a bad thing for a good result.

As already declared, the principle of personal liability as for a wrong, seems to offer an utterly insufficient starting point for a satisfactory system of relief. There are, however, other conceptions of rights and remedies known to the law besides the idea of personal liability. They result from situations in which a person has devoted or placed his property in such a relation to another person that such other person may have claims upon that property quite aside from any personal liability. Such a situation is well-known to exist in the maritime law, and is not unknown on shore, as for instance in the cases of liens by legal interpretation or statutory enactment.

Perhaps we can take the general idea of the mechanics' lien

laws as an analogy from which we can construct what we may call the principle of enterprise liability for industrial injuries. In the case of a mechanics' lien, the owner of property consentingly places that property in such a relation to other persons that such persons have a reasonable claim upon such property for the labor or materials put into the enterprise. In the case of an industrial enterprise of production, distribution, or public service, the investors and the workmen put their property and their lives and health in such relation to the enterprise that they build up or maintain a going concern, with a valuable good will, which, as the outcome of joint enterprise must be kept up and maintained by the repair of worn out parts and compensation for injuries inflicted by its operation, or else it is not paying its way.

If this analogy with a mechanics' lien law is correct, then we may, perhaps, exemplify it in a statute establishing a lien upon the assets of such an enterprise, in distinction from a personal liability against the employer, without violating the constitutional prohibition against taking property without due process of law; for the right asserted would exist by virtue of the acts of the interested parties in devoting their lives and their property to a certain purpose, and the right would be limited to such property so devoted as assets of the enterprise. Further, however, such a lien standing alone must be determined for individual cases according to the circumstances of each instance, like damages; but right here comes the opportunity for the application of the principle of insurance, for as the right arises by the acts of the parties in a going concern, so the statute in establishing a remedy by lien may adjust that remedy upon the basis of insurance averages for the risks of the industry, so that persons devoting their services and property to such an enterprise may do so in pursuance of the statute. A supposed law for Massachusetts, according to the foregoing ideas, is appended as an illustrative outline, and not as a final form for enactment.

Draft of an Act for the Relief of Industrial Injuries in Massachusetts:

1. Any person employed for the performance of personal services in an industrial enterprise for the production or distribution of commodities or the rendering of public service for profit, if such person shall suffer bodily injuries in the regular course of business or the execution of his duties in such enterprise, shall have a lien upon the assets devoted to such enterprise; but the title in fee simple to any specific property shall not be affected hereby when a lesser estate only is comprised in the assets of such enterprise.

2. The said lien shall be for the purpose of providing relief or compensation, to the person injured or his dependent relatives for such bodily injuries, and all persons hereafter devoting or continuing to devote their property or services to the uses and purposes of such an enterprise aforesaid shall be taken and held to have devoted their property or services respectively within the purview of this act and in consent to the provisions herein, except and in so far as the performance of any such services may be in pursuance of a contract of employment, already existing at the time this act shall first take effect, and until such existing contract shall be terminated by its own limitations.

3. Such lien shall be enforced, except as otherwise herein provided, by proceedings in accordance with sections twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven, of chapter 198 of the Revised Laws, except that the proceedings may be instituted forthwith upon the happening of the injury or within a reasonable time thereafter, and the jurisdiction of the court shall be according to the place where the injury shall have occurred. Further proceedings may be had in accordance with sections twelve to twenty-seven inclusive of chapter 197 of the Revised Laws, so far as such sections may be applicable in any case, and may include personal property as well as real estate. The initial proceedings may be begun by petition or by writ as in an action at law, and may be with or without attachment of the whole or any part of the assets liable to the lien, or with the joining of a debtor holding assets as in trustee process; but the title to specific property shall not be affected except as by attachment or levy on execution or a decree of court duly recorded in the appropriate district according to law.

4. Provided, however, that such a lien shall attach to any such enterprise only for the several amounts, rates, or payments, and at the several times respectively, set forth in the "Schedule of Relief" hereto annexed, when and so long as any such enterprise may be or remain enrolled by its owner or its responsible manager under the benefits of a mutual insurance association among the owners of like enterprises in the same general line of business, as hereinafter set forth.

5. The Insurance Commissioner of the Commonwealth shall from time to time classify the enterprises liable under this act in groups or classes of the same general line of business according to similarity of risks, and the owners or the responsible managers of any or all of the enterprises operated according as the chief preponderance of their business generally in the same general line of business may form one and only one mutual insurance association in the same line of business, for the purpose of paying claims under this act against the enterprises duly enrolled under the benefits of such an association. Any enterprise in a particular line of business shall be enrolled at the request of the owner or the responsible manager upon terms approved by the Insurance Commissioner.

6. Such an association shall be a corporation competent to sue or be sued by its corporate name, and may be organized by such owners or managers as in the judgment of the Insurance Commissioner shall establish in any one line of business the most equitable system of rates, premiums, and

assessments, among the members. In the first instance such rates, premiums, and assessments shall be fixed by the association, subject to the approval of the Insurance Commissioner; but the Insurance Commissioner may from time to time order any such association to amend its rates, premiums, or assessments, according to a more equitable basis in reference to the risks in fact involved, and in default of compliance with such order, the Insurance Commissioner may apply to the Supreme Judicial Court in Equity for the dissolution of such association, and the costs and charges of the proceeding.

7. Whenever any lien under this act shall be established against any enterprise enrolled under the benefits of any such mutual insurance association, such association shall reimburse the owner or the responsible manager of such enterprise for the several sums of money at the several times as they become due and for default of sufficient funds shall assess the said sums among the members of the association according to the previously determined system of rates, premiums, and assessments; or such association shall assume the liability to the injured person or his dependent relatives, if he or they as the case may be shall accept such liability of the association and discharge the lien, in which case also the association shall be held to make all necessary assessments as aforesaid.

8. No action at law for negligence shall be maintained in any case of injury for which relief is provided in this act, but a mutual insurance association liable to reimburse the owner or the responsible manager of any enterprise hereunder may recover damages against the person actually at fault, except the assured or the injured person, but against the assured if the injury shall have been caused by the wilful or malicious act of the assured or his neglect of precautionary regulations of such association approved by the Insurance Commissioner.

9. "Schedule of Relief."

(Same as the schedule in the New Jersey act for instance.)

DISCUSSION

MISS FLORENCE L. SANVILLE, PHILADELPHIA: I was asked to-day to contribute a few facts, local and concrete, in the way of discussion. These facts have been gathered during the last few months by a detailed investigation into factory conditions in Philadelphia by the Consumers' League, and I want, in my five minutes, to give you two simple little instances, and draw the simple conclusions that come from these instances. A few weeks ago two representatives of the Consumers' League, visiting a factory,—well cared for, and with an employer considerate in many ways,—found that the fire escape exits consisted, as they commonly do, of windows; but that the windows were held closed by screws! The screws were taken out in the presence of the investigators, and I trust that they still are out.

Within the last two days, two of the representatives of this society, in answer to a complaint, visited another factory, in the rear of the fifth story of a building occupied by different shops, and found the window exit to the fire escape so blocked by a row of machines, that the special investigator, who is not at all a large woman, was not able to reach the window. In the front part of that same story was another shop, occupied by a shirtwaist manufacturer. Here there were fire escapes with unobstructed exits; but in discussion with the employer it appeared that the fire escape had not been tested, and it was not known whether it would hold or not. When asked where it led to, he answered that no one knew; but that when one arrived at the second story platform, the best way would be to take a very short jump to the neighboring building, and that from there it was a drop of only one story to the ground. The visitor, however, climbed to the bottom of the fire escape to see where it led to, and discovered an apparently blind alley with no connection with the street. When she re-entered the shop, she was met with the amazing statement that one of the partners in this firm had had eight girls burned to death one year ago in another building, and he yet had never had the interest to find out whether this fire escape had an exit!

You cannot legislate against such brutal indifference as this,

but you can legislate for compulsory safeguards that will nullify its effects; and the Consumers' League is urging now that the Legislature take up two things directly traceable to discoveries of this kind. One is that proper exits to fire escapes shall be specifically required; and the other is, that fire drills, such as are customary in schools, shall be compulsory in factories. Fire escapes and adequate exits may exist; but in time of panic no one can foresee what terror seizes upon the mind of people, and unless habit has accustomed them to turn instinctively to means of safety, loss of life is almost inevitable. In our schools it has been successful. The children, young as they are, untrained as they are, turn to the safe way. Why not in our factories? There are ten factories to one school. The lives of our school children are infinitely precious. Are the lives of boys and girls who work less precious because they are in industrial pursuits?

MR. MILES M. DAWSON: There are two or three small matters which it would be virtually impossible for anyone not an actuary to bring forward, and I think it would be very unfortunate if we were to go away without bringing them out. One of these has relation to the difference in expense in the different insurance systems in Europe. Many of you have doubtless read the book prepared by Mr. Frankel and myself. The expense of insurance under state compulsion is about the same in Norway (straight out state insurance), in Austria (with employers and employees and the state participating), and in Germany (where the system is two-fold; one part run entirely by employers with supervision by the state furnishing benefits beyond the first thirteen weeks, and one covering under thirteen weeks run by the employers and employees). The expense is about 12 per cent of the gross collections which in Germany are really about the net amount currently paid out. In Norway it is an amount sufficient also to set by a reserve to take care of the future, and in Austria was intended to be sufficient, but never has been. In Germany the carrying on of sickness insurance by the workmen's societies costs about 8 per cent only.

Private insurance under workmen's compensation laws, has, in Great Britain, cost about 50 per cent of the entire collections, including the amounts required to be put by as reserves; which is fully 100 per cent added to the net cost. In other words, it is about

eight times as expensive, from the management and expense standpoint. In England, where commissions are lower than here, the commissions are equal to 30 per cent of the net amount required to furnish insurance.

In figures, I take it that in the United States we shall have about as many dollars to pay for our insurance, when it is in force, as marks in Germany. This is due to the higher purchasing power of money. If that should prove to be true, the net disbursements should not be less than 400 million dollars, when it is in full swing throughout the United States; and if you add 100 per cent for private insurance expenses you will add another 400 million dollars to it. If it is carried on under a similar system to that in Germany, and other countries, it can be carried on for about fifty millions of dollars. I need not say to you that, no matter what system you may use, there are, in fact, \$350,000,000 taxes paid unnecessarily for a service not required.

In New York in the building trades complaint was made after the workmen's compensation act was passed, because it was not state insurance. When they found the rates, made by adding the new charge to the former employers' liability rate, increased to as high as 20 per cent on the payroll—when they faced that, and realized that under state insurance it probably would not have been over 7 per cent or 8 per cent, their prejudices fell away promptly.

I may say that the Labor Department at Washington has published tables of the rates under all the different systems in Europe and in this country for a large number of representative employments in its September, 1910, Bulletin.

Another matter I wish to call attention to is relative to a statement by Dr. Talcott Williams. He compared the cost under the German system for insurance of employees in coal mines in the last year of the twenty-four, with the cost the first year, and he thought it represented an eight times increase in the cost. This is true only in a certain sense. The German system pays all its benefits in annuities or pensions. The result is that the first year there was only an average of six months' payments of the annuities incurred by reason of one year's accidents. In the 24th year, there were annuities to people who were injured the first year, the second year, and every year up to the twenty-fourth. The actuarial system called for a steady increase of outlay, not due to an increase

in the risk at all, but due to the actuarial structure of the plan, which started with only what was necessary to pay the current benefits and has increased as the number of annuitants from the previous years has increased. It is estimated that the ideals when that law went into effect have been realized.

MR. M. M. DAWSON: The suggestion has been made of compulsory insurance with free choice of companies. No one who does not study the subject from a technical standpoint, can say what the objections to introducing that system would be. In the first place, it is the experience of all European countries, where they have introduced it, with state insurance in competition with private insurance companies, that state insurance has not been conducted as economically as when given a monopoly. It has been found advisable, also, as in Sweden, to employ agents for the state companies. The moment, likewise, that you give free choice of companies, you must set up a voluntary reserve system, a system of reserve sufficient to maintain all the benefits that you promise to pay. This, as actuaries will certify, is unnecessary under the compulsory system, but it must be done under a voluntary system, including any system of free choice of companies. This involves a great and sudden increase in rates instead of a gradual one, taking no more money than is currently required.

Reference has also been made to explosives. In countries like Great Britain, where there is a purely voluntary system, the regular companies absolutely refuse to insure, and consequently the only way is for the employer to bear it himself, or for the employers to group and carry on a mutual system. In countries where there is compulsion, but with free choice of companies, the state must cover these risks. Indeed, under such a system the state company must take all the risks that other companies refuse.

Yet, under such a system, which is in operation in Sweden and in Holland, the state company is destroying the private companies utterly. The system merely prolongs the agony and increases the expense.

A suggestion has been made from the platform that perhaps workmen would not be willing to contribute, and that they should not be required to do so. In Europe, it has been found unwise to require them to contribute to defray the cost of industrial accidents.

In no case, except in Austria, where their contribution is fixed at 10 per cent, have the men been required to contribute to a fund which pays for accidents occurring while at work. In most comprehensive systems, such as that of Germany, which covers disability due to any cause, there are contributions from workmen. They have been willing to contribute in such case, also, wherever they had the opportunity.

I may add that many, my clients and others, who are adopting mutual systems in this country, have faced this same objection, and, provided workmen were given broad protection, they recognized it as just and have been willing to contribute fairly. It all depends upon whether they are offered a good bargain.

Another statement that I think proper to make, is that the gentleman who urged amendment of the constitution as the next step, should take into account that in order to generally introduce laws in that way, we must have forty-six separate states take action upon amendments to their several constitutions, and also upon amendments to the national constitution. It would, therefore, be many years before we would have achieved what we set out to accomplish.

One further remark, also, concerning a matter of fact. It is that this suggestion concerning national action calls forth my recollection of an interview with the vice-president of the German insurance department, having charge of the supervision of their system. That gentleman, having watched very carefully the conditions the world over, expressed his belief that the one country in the world where the German system could be used without destructive modification, was the United States. One reason why he was of that opinion, is because we have these separate states and territories. Germany, as you all know, is composed of separate kingdoms, each with sovereignty over local affairs and under its own hereditary monarch. A like situation confronts us in this respect, that there must be free trade between our various states. Therefore, we should have a uniform system throughout the country. What looked at first most difficult there, has now proved the very easiest thing to do; and I am not without hope that such may also be true here.

I wish to announce that there will probably be held in this country within the next two years, in 1912 or 1913, an international congress upon social insurance at which all of the great experts

of Europe will be present. It will be quite as open as this meeting for public discussion of all phases of this question. Authority has been given to President Taft by Congress to invite delegates from foreign countries to attend such a congress; and the International Committee of the congress has agreed to come, if officially invited.

You should receive due notice of this and, if interested, please send your name to the Secretary of the American Academy, at West Philadelphia, and you will be informed by the International Congress Organization Committee, when formed.

MR. FRANCIS H. BOHLEN: One thing has been emphasized in the discussions, not only this afternoon, but throughout, and that is that at best any scheme of workmen's compensation merely, such as that in England, is but a step towards a final ideal. I am quite convinced by the little personal attention which I have been able to give to the subject that adequate relief can be secured only by some system of insurance. There is one point alone which I think shows the absolute necessity of this. The relief, to be real relief, and effective for relieving the wants of the workmen, and of his family after his death, if the accident should unfortunately result in death, must evidently be administered by payments in installments. Now it is quite impossible in smaller trades to secure the constant payment of installments, except by the purchase of annuities,—and we have no governmental bureau or department from which such annuities can be purchased,—or by insurance of some sort. Indeed, we seem to be, upon that point alone, reduced to the necessity of summoning the aid of some species of insurance.

A great deal has been said (I am a lawyer also, or at least have been) in regard to the waste incidental to the services of my much maligned, or perhaps accurately described profession. It seems to me from what I have heard, that a great part of the waste, and there is no doubt of a great deal of it between the time when the payments leave the pockets of the employer and when they come to the hands of the workmen (it has been calculated to be at least 60 to 75 per cent), comes from the competitive nature of private insurance. There seems to be no question, from the figures heard yesterday, that a great part of the premiums go, not only to the expenses necessary to insurance, but to a great many that are necessitated only by the fact that the insurance companies which

do the business are not only insuring for their profit, but are also insuring in competition with other companies which desire their share of the business.

There seems to be no doubt as to one further point, that that species of intimate and careful inspection by the body which has charge of the insurance, which is the best guarantee of a faithful effort to secure the safety of the workmen, can only be attained without friction, and with the fullest efficiency, by the inspectors of mutual or group insurance. I have no doubt that in an ideally administered state, a state insurance department might exist which, by grouping employers in the various trades in accordance with the condition of their factories, and according to those whose factories were in a thoroughly efficient and safe state a lower rate of premium than those in less safe condition, might accomplish excellent results, but no government supervision in America has been found to work as efficiently as that compelled by the self-interest of the persons most nearly concerned therein.

There is one more result which I think this species of compensation would accomplish, I would not say in the prevention of accidents, but in minimizing their effect and consequences. There are quantities of comparatively small accidents, which, if they are neglected, do result in very serious injury. Making the master liable in any shape or form for part of the wages of the injured workmen, will afford an incentive of self-interest, to induce him to afford injured workmen immediate aid and medical attendance in order that final consequences may be made as light as possible.

MR. EDGAR M. ATKIN: For five and a half years I was in charge of the Claim Department of the New York Edison Company. During that time the company carried no liability insurance, but treated the accident problem by means of a system of compensation which was so satisfactory that only six law suits resulted from approximately three thousand accidents. It was our experience that the principle of compensation to employees is economically sound and a vast improvement upon the theory of employers' liability.

It is provided in paragraphs nine and ten of section two of the New Jersey act, that the workingman in New Jersey shall not lose any of his contractual or constitutional rights under this law. Under the provisions of the Barnes' act in New York, a brakeman is not considered to be the fellow servant of an engineer or switch-

man, and yet under the provisions of the liability law of that state, a cash girl in a department store has been held to be the fellow servant of the man who runs the elevator. This is a strange anomaly.

A remark was made this morning to the effect that not a single claim was made by an employee against an employer under the compensation act which was declared unconstitutional. The reason for that is not hard to ascertain. Employees and their attorneys were afraid to bring test cases under the compensation act until its constitutionality was determined in the decision in the Ives case. In the event that a constitutional act is passed there can be no doubt that a workman will take advantage of it.

It is the theory that the ultimate consumer should bear the loss occasioned by accidents in all branches of industry. How can this be done where the price of the commodity is limited by legislative enactment, as is the case with street railways, the gas and the electric industries?

I regret that in declaring the New York liability and compensation law unconstitutional, the court was compelled to strike out that clause which should have been in the amended liability law which clause provided that every contract taken by an attorney on a contingent basis should be submitted to the judge trying the case. Some provision for the inspection of contingent contracts in accident cases should be made in all laws of this character that are passed in the future.

MR. JAMES L. GERON, of New York Joint Labor Conference: I am reluctant to take part in the debate, owing to the five-minute rule. We know, of course, that the compensation law in New York State has been declared unconstitutional, and we have heard much of the compensation law of New Jersey, which has just been enacted. The New Jersey law does not appeal to the labor people who have made a study of the subject, for the reason that it does not permit the freedom of contract. This law wipes out the fellow servant and assumption of risk defenses in the liability, and in lieu of that establishes compensation. Now, we all know that with the defenses removed the employer will take compensation because it levels the liability, and the employee will secure employment provided he waives his common law rights.

One gentleman spoke yesterday on the excellent plan of compensation of the International Harvester Company, but this same company denied the loyal American citizens in its employ the right to celebrate Washington's birthday as a holiday, and because they refused to work they were discharged. This demonstrates the freedom in employment. The International Harvester Company and the United States Steel Corporation can put in operation plans of compensation because they have a practical monopoly of the industry and can make the wage-earner pay the cost of their plan. If there is to be any compensation for industrial accidents, we want every manufacturer to have his freedom and every workman to have his.

It does seem to me that the New Jersey law is no more constitutional than the New York law, and is pernicious for the reason that it will compel thousands of employees to sign away their common law rights when they enter employment, notwithstanding the fact that they may never be injured. The New York Joint Labor Conference has given this subject considerable study. We have worked with the New York State Commission as well as we could, and we differed with them on many points. We believe we are much more advanced, and many students of this subject say we are right. Certainly no one can be right as to what is constitutional, because all the eminent lawyers in New York differed on this subject, and we assume that most of the good lawyers are in New York; at least the headquarters of corporations are there and they center their legal talent there.

The New York conference is on record as in favor of compensation, the same to be on a state insurance plan. When suffering injuries in industry we do not wish to be at the mercy of a bankrupt employer or corporation, nor of the evils of insurance companies. Therefore, we favor a state insurance plan of automatic compensation. If a just plan under such a system were established by the state, the working people would not object to reasonable contribution, notwithstanding that they suffer all the pain due to industrial accident, together with the economic loss.

Every one seems to side-step the idea of amending the constitution. We should not reverence the constitution because it has been in existence one hundred and twenty-five years or so. If the American Constitution does not permit the producers of this country to receive as just treatment as they do in every paternal country

of this great world, then it is not what it should be, and the sooner we amend it the better. The working people of the State of New York are committed to this proposition, and we are determined to amend the constitution of the state. Even if it takes years, it will be amended. If the American Constitution does not give us what we can get under paternal government it is time for every free-born American and every citizen to exert his efforts to change the constitution.

MR. HOWELL CHENEY: Without detracting from the earnestness of the previous gentleman as regards the impracticability of establishing compensation systems under small employers, I must express the conviction that a compensation system is perfectly feasible for the small employer, as well as for the large one, if it is treated as any other item of the cost of production and conducted with strict attention to prevention. I can speak from the continuous experience of a large business which started as a very small one and which has continuously compensated accidents arising out of employment without regard to fault; that such a practice has proven it possible to go for sixty-five years without an accident suit, and even without paying a lawyer's fee because of personal injuries arising out of employment. Injuries received in the course of employment have been compensated for without question as to the negligence of a fellow servant, or the trade risk, or the contributory negligence of the injured person unless it were of a serious and wilful nature. This system was carried out both as a small firm and as a large one. It was carried out in the belief that strict adherence to the doctrine of personal fault could arrive neither at justice nor prevention.

We have all come to recognize generally that a large part of the industrial accidents are not due to fault in the sense that it is humanly avoidable or preventable, and that the rigid adherence to such a mistaken principle has made neither for efficient prevention nor compensation. But the public realization of the injustice of our old theory of personal fault has lead not unnaturally to the trying out of another fallacy; that since it was not the fault of the injured person it must be the fault of his employer; and hence, it was the duty of the state to step in and demand compensation, because of such assumed or imputed fault on the employer's part. Undoubt-

edly, gravely dangerous conditions have existed which justify this policy as a matter of equity, if not as a matter of law. But, if the New York decision has freed our minds of the idea that we can arrive at a satisfactory measure of justice by imputing a fault generally, when none may have existed, it may perhaps lead to pointing towards a truer solution of the difficulty. Since the courts have told us that we cannot invoke the police power for the protection of workers, unless fault exists either actually or constructively, we may finally abandon the idea of basing our remedy upon any idea of fault and seek, not negatively, but constructively to legislate for the protection of the workingman by the laying of a tax upon all industries to compensate for the injuries due to the inherent risk in industry as a whole, and justify such tax as necessary for the general welfare.

An appeal to the enlightened self-interests of the community, especially to employers, has justified taxes for industrial education, for the physical care and feeding of school children, for the suppression of tuberculosis, for the support of the poor and destitute, and for the maintenance of hospitals for the insane, drunkards and other mental and moral wrecks of our industrial system. We are no longer justifying our expensive school system solely on the idea that the protection of the citizenship of a democracy demands the cultivation of a higher general intelligence. We are frankly affirming that the protection of our citizenship depends upon the efficiency of its workers, and are making large public expenditures for the cultivation of a higher efficiency. Such expenditures never could have been justified by an appeal to the state to protect its workers from the direful effects of ignorance and inefficiency by an arbitrary taking of money from a limited class of employments in which the conditions might amply justify such a course. The fact that the courts have held that we cannot impute or create a fault where none has existed, nor deprive a man of his property without due process of law would not, at least to the lay mind, necessarily deny the right of imposing a tax upon all of the industries of the state for the protection of the welfare of all of its workers. And if you will appeal to the enlightened self-interest of employers on the grounds of the increased efficiency of their workers, which will result from such adequate compensation and the real prevention which such a tax will induce, you will make far more rapid progress

than by grieving over your failure to invoke the police power as regards a limited class of industries by imputing a fault where none may have existed.

It was generally recognized that even if it were possible to base compensation upon the police power it could not have been made automatic as being based upon fault every man must have his day in court to defend himself. It would have thus been subject to one of the worst evils of present conditions, the law's excessive expenses and delays. The creation of a state tax to support industrial insurance does not necessitate such a failure in methods.

It is an unfortunate feature of most reform legislation that in its initiation it proceeds by restriction or negation. Not until the evils of restriction become apparent do we proceed constructively to accomplish what we are really after. This has been well illustrated in child-labor legislation, where wise restrictions have lead to our realizing that the efficient education of the child for his future life was his truest protection, and of far more importance than the simple forbidding of employment. And an appeal to the enlightened self-interest of the employer to assist his future workers in a training for efficiency is now enlisting his support where simple negation met only opposition. We have another illustration of the same idea in the extension of educational work in regard to tuberculosis, and general hygiene and sanitation.

We are becoming used to a wider exercise of the taxing power, and employers can mutually come together on a principle which appeals to their intelligent self-interest by showing them that constructive work can be done in conserving the efficiency of their employees. And as a speaker has well said, physical well-being and its resulting efficiency is reduced not alone by industrial accidents, but by sickness and disease. Any effective system of industrial insurance must be capable of ultimately extending itself to sickness and death from disease. And any effective industrial insurance must be a tax upon all industry, workers as well as employers, and not upon a limited class of employers alone.

MR. PIERRE R. PORTER: I have been asked to tell you in a few words what has been done upon this question in Missouri and in Kansas. It was my pleasure to be a member of the Missouri commission, and I have also, upon several occasions, appeared before

the legislatures of Missouri and Kansas with reference to legislation upon this subject. Last December Governor Hadley appointed a voluntary commission and requested that this commission should frame a compensation act within thirty days. I think if anybody should ask you ladies and gentlemen to do this that you would do exactly what the commission did; you would say that you could not do it. We made a report to the Governor that owing to the constitutional questions involved and the lack of information and especially in view of the brief period of time allotted to us, we would not take the responsibility of framing a specific act, and we recommended that a permanent commission be appointed by the legislature to study the subject for two years, with an adequate appropriation, and report a bill back to the legislature at the 1913 session. Governor Hadley made this recommendation, but the legislature being democratic and the Governor being a republican, the recommendation was not followed and no definite action was taken by the legislative body. However, the Senate appointed a committee of five of its own members to study the question.

It is interesting to note the difference in the trend of legislation in Missouri from that in Kansas. In Missouri, two liability laws and two compensation bills were introduced, but the whole matter was bottled up for this reason: the representatives of the Federation of Labor desired a liability law similar to the Federal law, while the employers and the manufacturing interests took the position that the matter should be referred to a permanent commission along the line of the report of the voluntary commission. The result was—nothing. In Kansas the same fight went on along the same lines. Laboring men wanted the liability law and the manufacturing interests wanted a permanent commission. The result was a compromise. The legislature passed a compensation act, which is virtually the National Civic Federation Bill, with—tacked on to it—an elective plan, that is, the act is not compulsory, but is optional. There is some question whether this Kansas act is constitutional because, while it does not in so many words compel the employer to give compensation, yet the result is the same, because it virtually says to him, "you need not agree to give compensation if you do not wish to, but if you do not we will take away your legal defenses."

If I may, in a friendly way, criticise this discussion, there is one point which has not been touched upon at all. We have heard

a great deal of the desirability of a compensation act which shall be compulsory upon the employer, but we have not heard a word about the advisability of an act which shall be compulsory upon the employee, and I feel that if you do not get an act, which, in effect, shall make the workman take compensation, then your act will not be practical in its operation. If you take away the legal defenses and allow the workmen to either sue at common law and have plain sailing before the jury or take compensation, he will do this: If he has a case where he can get large damages, being persuaded by smooth-tongued lawyers, he will reject the compensation and sue at common law, and the present evils will continue. On the other hand, if he has no case at all he will take the compensation offered. Does it not occur to you that in that sort of an act, which is really what most agitators upon this subject have in mind, you are really creating a double liability? That is the conclusion which our commission came to, and we felt that with our lack of knowledge, and in view of the difficulties encountered by the other commissions, it would have been a mistake for us to have recommended a liability law, because that would have been a step in the wrong direction, or to attempt a hastily prepared compensation law which would have not been satisfactory, and thus perhaps have made the question of compensation more difficult than ever. So we sought to do this: we sought to initiate the same idea into both Missouri and Kansas, namely: that there should be a permanent commission appointed in each state to study the subject, and these two commissions should work together with the idea that we should have uniform laws in both of the states, because if, of two sister states, one has a drastic law and the other has none, the situation will be dangerous and harmful to competitive industry. The result was that in Kansas they have a compensation act, which may stand the test and may not, while in Missouri we have nothing, and it is a matter of much regret to Governor Hadley, and to the Commercial Club of Kansas City, that no definite legislative action upon this important subject was taken in Missouri.

MR. THOMAS J. CURTIS, President, Tunnel and Subway Constructors' International Union:—In regard to compensation, the industry that I represent is one that would need compensation very badly. Out of eighty cases in the last year that we brought to

court, previous to our New York law, we won only one. Just take into consideration the sorrow of the families of these men, some of whom are not able to be seen on account of being all blown to pieces, mangled, or with heads blown off. We have been successful, as I stated, only in one case in the court. The court has held that if a man, working at his daily work, happens to be blown up, the explosion was premature.

As to insurance, God knows we have plenty of that. We have had insurance agents come to the men when they were injured, and settle all the way from ten dollars to fifty cents. I had a man, only the other day, injured—leg broken in two places—a colored man. The agent came and settled for \$30. He came to me about eight weeks after he was hurt, and said, "Say, Mr. Curtis, when I settled for that broken leg I didn't know it was broken in two places. Do you think I could get \$30 more?" That is the way insurance has acted in this industry.

We hoped that this compensation act would be declared constitutional and, if it had been, we might have had some chance for the men that are under it. At the present time, just before my departure, I had to get two families, six children each, into an institution, and the mothers of those children have to go out to work. Not a cent in the house, and the organization could not afford to support them any longer. Why do not we want an amendment to the constitution, and should we not have an amendment to the constitution to protect men in that industry? We have had it agitated, as the newspapers would say, for five or ten years, trying to get employers in our industry to make it passably safe for men to work, and we have politics and everyone else against us.

The whole thing is that we never have any remedy. You find that the officials are beginning to take it up after we have a couple of fires. Only last year in my industry we had seventy-three men blown up by explosions and 150 permanently injured, and the employers have a system in our industry, where they dock them while they are up in the air. They did not get down quick enough, and lost ten minutes. There is no system of protecting men, or of getting damages in the courts. We have come to feel that if something is not done we will have to give up the idea of using the courts. In every case it is a premature blast. A man can be injured by a machine falling on him, and it was a premature blast that

caused it. Then, there is the reckless handling of explosives. There is a system to examine men for handling explosives. All you need is a letter from the contractor, and with a politician behind you, and you have your examination. It does not matter if you never saw a stick of dynamite—they take a chance on you, anyway.

MISS MARY WINSOR: My sympathies are entirely with one of the previous speakers who seemed to represent the working people, and said that the constitution "must be amended." He struck at the root of our difficulties. We have heard a great deal this afternoon about Woodrow Wilson, but let me remind you of a greater democrat, Thomas Jefferson, who said that the constitution should be amended as least every twenty years, so that the opinions of by-gone generations might not press like a yoke on the necks of the living generation.

I think we have all been impressed with the inconsistencies of this discussion. We have not debated whether these proposed measures (on employers' liability and workingmen's compensation), are just, or fair, or necessary. All that has been taken for granted, and we have occupied our time chiefly in discussing how we may best manage to go through, go around, or go under the constitution that stands like a barrier in the way of progress. And yet we are told by some of the speakers that we must honor the constitution, and look on it as a bulwark of our liberties. Now, if it is an obstacle to progress, so great that we must plot and conspire to circumvent it, how can it be a bulwark of liberty?

This remark is apparent in the remarks of Mr. Walter George Smith, who told us, in almost a threatening way, to respect the courts and the constitution; as if such responsibility did not rest also upon the constitution and the judges, who should render decisions that could be respected by the community.

I sympathize with the bitterness with which the gentleman spoke who was interested in the laboring class. I have been interested in getting better laws for working people and in child labor, and I tell you it is like walking through thick sand, if you make two steps forward, you slip back at least one. If you succeed in getting a good child labor law through the legislature, then there is surely a "joker" in it somewhere, and the courts may be relied on to declare it unconstitutional. That has been the practical ex-

perience in this state, and in other states. It is difficult to respect such laws and such judges, or the constitution, when it is made a pretext to overthrow merciful and humane legislation, intended to protect working women and children.

Let us amend constitutions, if they stand in the way of progress, and if they are holding this country forty years behind Europe. One of the eminent gentlemen who spoke this afternoon, told me, in private conversation some weeks ago, that his opinion of the constitution was very much in accord with mine, and I said to him: "If that's your opinion, *it's a great pity you don't say so in public.*"

DR. ROWE: Ladies and Gentlemen: Just a word in bringing this, our Fifteenth Annual Meeting, to a close. It is a real tribute to the citizenship and the civic spirit of this country that we can bring together from every section busy men to discuss the great questions, which affect the present and the future of this nation. I have always felt that in the United States we have the great advantage over Europe, in the possession of a reserve force of civic patriotism, of a citizenship imbued with a sense of obligation, far in excess of that which we find in the countries of Europe, and I think that this Annual Meeting has shown the strength of this civic feeling. The fact that representatives of all interests can get together and in a quiet, calm and dispassionate way, exchange their views and try to arrive at some just conclusion, is one of the most encouraging symptoms in the development of our national life.

Our gratitude is due to all the speakers at these five sessions, as well as to the presiding officers, all busy men, who have taken from their valuable time to give to us the result of their personal experience and investigation. I wish also to thank the official state delegates as well as the delegates from manufacturers', commercial and labor organizations, who have been so faithful in their attendance at these sessions. It is with keen regret that I now declare the Fifteenth Annual Meeting adjourned.

REPORT OF THE ANNUAL MEETING COMMITTEE

In the selection of the topic for the Annual Meeting this year the Academy was particularly fortunate in choosing a subject which at the time the meetings were held was attracting the attention of every section of the country. The deep interest manifested in the sessions is attested by the fact that the governors of fifteen states appointed special delegates to attend the Annual Meeting, and that delegations were also appointed by thirty-eight manufacturers' associations, trade and labor organizations. At no time in the history of the Academy has the influence of our organization on the public opinion of the country been more clearly demonstrated. Not only were all the sessions largely attended, but the special exhibit of safety devices, organized by the Academy as an integral part of the Annual Meeting, attracted widespread attention.

It is impossible for the Academy adequately to express its appreciation to those who participated in the sessions and also to the large number of persons, serving on special committees, who contributed by their services to the success of the Annual Meeting.

We also wish to express our obligation to those who took part in the Special Exhibit of Safety Devices. At this exhibit the following firms and corporations were represented:

ATKINS, E. C., & Co., New York,
"O. K." Saw Guard for Circular Saws.

BASS BROTHERS, New York,
Buckeye Shaper Guard,
Jones Jointer Guard,
Diamond Belt Shifter.

BURROUGHS AND WELCOME COMPANY, New York,
"Tabloid" First Aid Cases.

DAVY AUTOMATIC FIRE ESCAPE COMPANY, Syracuse, N. Y.,
Davy Automatic Safety Fire Escape.

GREINER & Co., New York,
Respirators.

HAMBURG-AMERICAN LINE, Philadelphia,
Photographs of Marine Safety Devices.

HAMRICK TANK AND BARREL HARD-SHELL ENAMELING COMPANY, Philadelphia,
Safety Appliances for use in Breweries.

HAYWARD, S. F. & Co., Philadelphia,
National Smoke and Ammonia Helmet,
Hayward Fire Extinguisher.

KEASBEY AND MATTISON COMPANY, Ambler, Pa.,
Model House Showing Use of Asbestos Fireproof Materials.

LACKAWANNA STEEL COMPANY, Buffalo, N. Y.,
Abbott Rail Joint Plate.

LINK BELT COMPANY, Philadelphia,
Chain Guard.

MCAULIFFE PORTABLE FIRE ESCAPE COMPANY, Cleveland, Ohio,
McArthur Portable Fire Escape.

MCNUTT CAN COMPANY, New York,
Non-Explosive Cans for Volatile Liquids.

MOREWOOD STANDARD SAFETY DEVICES COMPANY, New York,
Safety Window Guard for Window Cleaners,
Safety Fire Exit Door.

NEW YORK ELEVATOR COMPANY,
Safety Elevator Appliances.

NORTON COMPANY, Worcester, Mass.,
Grinding Wheel Protector.

PATENT SCAFFOLDING COMPANY, New York,
Scaffolding Devices.

PHILADELPHIA ELECTRIC COMPANY, Philadelphia,
Linesmen's Shield for Protection against High Tension Currents.

PHILADELPHIA LOCAL TELEGRAPH COMPANY,
Watchman's Reporting Device.

RIDER, P. L., Worcester, Mass.,
Barnum Respirator.

SAFETY POWER TRANSMISSION COMPANY, New York,
Safety Shaft Guard.

SCHUTTE AND KOERTING COMPANY, Philadelphia.
Safety and Emergency Stop Check Valves.

STILLMAN SAFETY LAMP COMPANY, New York,
Safety Lamps and Heaters.

STONE, WILLIAM, Milwaukee, Wis.,
Guard for Grinding Wheels.

STRAUS, NATHAN, New York,
Pasteurizing Plant.

UNITED STATES STEEL CORPORATION,
Photographs of Safety Devices in Use at their Plants.

VONNEGUT HARDWARE COMPANY, Indianapolis, Ind.,
Von Duprin Self-Releasing Fire Exit Devices.

WORCESTER PRESSED STEEL COMPANY, Worcester, Mass.,
Photographs of Safety Devices in Use at their Works.

ZEILLER & NAGEL, Brooklyn, N. Y.,
Saw Guards.

The Academy is under special obligations to the chairman of the local reception committee, Hon. Charlemagne Tower, as well as to the members of the committee, and to Mr. James M. Dodge and Mr. Murray Gross, to whose indefatigable efforts the success of the Special Exhibit of Safety Devices was in large part due. The Academy also wishes to express its obligation to those who so generously contributed to the special Annual Meeting fund.

During the period of the Annual Meeting the courtesies of the Manufacturers' Club, the Union League, the City Club, the University Club and the Acorn Club were extended to out-of-town members and guests of the Academy, and for these courtesies we desire to make due acknowledgment.



BOOK DEPARTMENT

NOTES

Ames, Edward S. *The Psychology of Religious Experience.* Pp. ix, 428.
Price, \$2.50. Boston: Houghton Mifflin Company, 1910.

Beard, C. A. (Editor.) *Loose Leaf Digest of Short Ballot Charters,*
No. 175. New York: Short Ballot Organization, 1911.

"Loose Leaf Digest of Short Ballot Charters," by Prof. Charles A. Beard, of Columbia University, is, as its title indicates, a documentary digest of short ballot charters. It contains a brief digest of the essentials of commission charters and statutes and of other quasi short ballot plans. It also contains the texts of eight commission charters and of the Lockport Plan. Any special features of short ballot charters are briefly given.

There is a tabulated list of the cities working under short ballots, giving their population, the form and date of the act, the date on which the city began to operate under the act, and the salaries of the commission. There is also a tabulation of the initiative, referendum and recall provisions, giving the percentages required for elections under each. Emphasis is put upon the commission plan, but all of the data hinges mainly upon short ballot advantages.

The book is more than a digest. It contains chapters on commission government, including articles by President Eliot on "Better Municipal Government," by Robert Tyson on "Preferential Voting" and "Proportional Representation," by Richard S. Childs on "The Short Ballot: The Secret of Success of the Commission Plan," and by Delos F. Wilcox on "Municipal Franchises." Mr. E. H. Goodwin has prepared a "Civil Service Act Adaptable to Commission Cities." The book also contains a series of special reports from the larger commission movement cities, giving the actual workings of the plan. A full bibliography is appended. The book is in the loose leaf form that amendments and addenda may be readily added. The Digest is of inestimable value to all members of charter conventions and to students of political science who wish detail and accurate data.

Brandeis, L. D. *Scientific Management of Railroads.* Pp. 92. Price, \$1.00
New York: Engineering Magazine, 1911.

The editor of the "Engineering Magazine" has printed in book form the discussion of the possible economies in railroad management as presented in the brief which Mr. Brandeis, as attorney for the shippers, submitted to the Interstate Commerce Commission in the cases involving the proposed increases in freight rates in Official Classification and Western Trunk Line territories. The views of Mr. Brandeis and his arguments in support of them are well known and are receiving serious consideration by railway officials as well as by the public. Their publication as a book is

fortunate because it makes them more readily obtainable, and will make their influence more widespread and lasting.

Chambers, J. *The Mississippi River and Its Wonderful Valley.* Pp. xvi, 308. Price, \$3.50, net. New York: G. P. Putnam's Sons, 1910.

This story of the history and romance of the Mississippi River and Valley is the eleventh volume in a series of books published to awaken a popular interest in the history of American discovery and development. The evident purpose of authors and publishers is to appeal to local sentiment. The books are so written as to be sold by the book agent; the illustrations are many, the press work, paper and binding are attractive. It is evidently assumed by the publishers that the general public, for whom the books are intended, will not insist upon literary merit. Many paragraphs of the volume on the Mississippi are mere jumbles of unrelated phrases. The superficiality of the treatment might be expected, because of the popular character of the book; but the disregard of all canons of good writing is inexcusable.

In spite of its serious defects, the book may be read to advantage by those who have not seriously studied American history or who do not have access to the standard works from which Mr. Chambers has secured his materials. Many readers will no doubt find this book and its predecessors entertaining, and the volumes will probably accomplish their general purpose of aiding in popularizing the history of our country.

Escher, F. *Elements of Foreign Exchange.* Pp. viii, 160. Price, \$1.00. New York: Bankers' Publishing Company, 1910.

This compact little volume is one of the "Modern Business" series, and is designed to meet the needs of the busy man who wishes to know something about the mechanism of international business transactions. It is probably the best book discussing foreign exchange from the American point of view. It disclaims any attempt to be theoretical. The facts, however, and the running comment upon them are good. They are interesting, well chosen and to the point. The book covers all the important varieties of foreign exchange, the sources of its supply and demand, the influences affecting its value, and the profit made in such transactions, with a chapter each on the "Movement of Gold," "Securities" and "Merchandise."

Fiske, Arthur D. *The Breaking of Bonds.* Pp. 79. Price, \$1.00. Boston: Sherman, French & Co., 1910.

Frank, R. J. *Science of Organization and Business Development.* Pp. 278. Price, \$2.75. Chicago: Chicago Publishing Company, 1910.

The second edition of Mr. Frank's work covers the same general ground as the original volume published in 1907. Two-thirds of the book is given over to a very elementary discussion, which can be comprehended by any layman, of the methods of planning, organizing, financing and managing corporations. The most valuable portion of the book to the average reader

is the large appendix comprising the balance of the volume, in which is given specimen forms of contracts used in the promotion of corporate enterprises, together with instalment certificates, specimen by-laws, specimen stocks and bonds and a synopsis of the corporation laws of the states which, in the past, have chartered the majority of corporations.

Grant, Percy S. *Socialism and Christianity.* Pp. vii, 203. Price, \$1.25.
New York: Brentano's, 1910.

This volume is composed of a number of articles which have appeared in various magazines, including discussions of Christianity and Socialism, the "Wants of Workingmen," "Physical Deterioration Among the Poor," "Divorce and the Family," "Help for the Negro," "Responsibility for New York's Vice and Crime," "Children's Street Games," and "Workingmen and the Church."

Socialism needs the patience and charity of Christianity, while Christianity needs a proper recognition of the relationship of men. Proper education is the solution of the Negro problem, and physical education will benefit the poor. Better men and women would solve the divorce problem, since the facts which lead to divorce impeach our present achievements in character. All classes are in part responsible for New York's moral condition. Much of the present violence between classes is the result of ignorance and misunderstanding; workingmen are hoping for an industrial brotherhood; the Christian church is naturally adapted to bring about a better feeling between classes. These conclusions of the author prove the value of this work to all interested in religious and social movements.

Guerber, H. A. *The Story of Modern France.* Pp. 350. Price, 65 cents.
New York: American Book Company, 1910.

This volume in the series of Electric School Readers is entertainingly written and is well adapted to its purpose. The themes selected by the author are of war and of great men and women. The book seeks rather to present the drama of the history of France than to describe with accuracy and completeness the past economic, social and political conditions of the country.

Guiteau, Wm. B. *Government and Politics in the United States.* Pp. iv, 473. Price, \$1.00. Boston: Houghton Mifflin Company, 1911.

This is one of the most carefully prepared text-books on civics for secondary schools that has appeared. It takes courage to begin a book of this sort with a discussion of local government. The federal government is so much more spectacular, so much more definite, and alack so much more a matter of public interest that the average author like the average man overlooks the government that lies nearest him, to describe at length an organization the touch of which one feels comparatively seldom.

Mr. Guiteau begins with the local government, tracing its origin, and functions, then municipal government and its problems are discussed, then the state and finally the nation. In each case there is a brief sketch of the historical background of the institution described as well as its present

day extent and work. One feels at times that so all inclusive does the book aim to be, that there is not enough definite detail, but this defect is one that must be common to every work which aims to cover the whole field of civics in a short one-year or one-term course in high school.

Every chapter is followed by a select bibliography which deserves the name. Only books which are or ought to be in every efficient high school library are cited and the references are to exact chapters and pages. For the high school student this is the only practicable way of inducing and directing collateral reading. As anyone who has been through the experience knows, a general assignment to a high school pupil results in the average case in a waste of time and discouragement.

Each chapter, too, has a list of carefully thought out questions for which the pupil must use the facts of the text, the references and his general knowledge. The attempt is made to draw the student out into independent, vigorous thought rather than to give another incentive to absorb the text.

Another commendable feature is the use of diagrams and well chosen photographs. Facsimiles of various documents, such as injunctions, ballots, bills, pictures of congressional apportionments showing gerrymanders, and presidential proclamations help to give the text life.

Hackett, F. W. *Reminiscences of the Geneva Tribunal of Arbitration 1872.*

Pp. xvi, 450. Price, \$2.00. Boston: Houghton Mifflin Company, 1911. Although not at all inaccurate, perhaps the title of this book does mislead. One expects to find it principally devoted to anecdotes and records of many experiences which took place during the meeting of the tribunal. Instead we have, in chronological treatment, a delightful and vivid account of the whole question of the Alabama claims and their submission to arbitration. Mr. Hackett has also preserved for history many interesting incidents of the greatest arbitration the world has seen. Besides his invaluable personal experience as secretary to Caleb Cushing, senior counsel for the United States, the author has enjoyed the friendship of many of the principals concerned in all the negotiations relative to the settlement of the controversy. His residence at Washington and the high official position which he has held have secured for him access to the relevant documents in the archives of the State Department.

In no part of the book is the reader wearied by long technical arguments or array of data. The more important parts of the negotiations and procedure of the arbitration are given the proper relief and treated concisely, yet fundamentally. One of the most interesting questions relates to the difference between the two countries, regarding the submission to the arbitrators of the claims for "national" or indirect damages. The firm and dignified way in which the Americans defended their contention, that those claims were by the terms of the treaty submitted to the tribunal, does credit to Secretary Fish and the men he selected. If the extraordinary action of Sir Alexander Cockburn of the British arbitration was calculated to shock and offend, the broad-minded and courteous action of the British

agent, Lord Tenterden, smoothed over many a rough place. During the forty years that have intervened, the thought of this peaceable settlement of this most serious international difference has smoothed over several rough places in the diplomatic intercourse between Great Britain and the United States, until at the present time the possibility even of a serious difference ever again arising between them is doubted by some of our most competent authorities.

Hecker, Eugene A. *A Short History of Women's Rights.* Pp. viii, 292.

Price, \$1.50. New York: G. P. Putnam's Sons, 1910.

This is a most interesting and careful review of the Woman Question. The author employs the historical method, beginning with a discussion of women's rights in the days of Augustus, followed by an investigation into the conditions among the barbarian invaders of Rome in the middle ages and of modern conditions in England and America. His summary, by states, of the various legal and political rights and disabilities of women in the United States, is well done. The work is scientific, detailed references being given to all the original sources. The data are presented in such a form as to be readily available for general use.

Horne, H. H. *Idealism in Education.* Pp. xxi, 183. Price, \$1.25. New York: Macmillan Company, 1910.

This book presents, for the first time, a definite attempt to combine educational idealism and Eugenics. The three elements in man-making, says the author, are Heredity, Environment and Will. Heredity is usually over-emphasized, since men believe that when the fathers eat sour grapes, the children's teeth are inevitably set on edge. Nevertheless, biologic discoveries tend to show that heredity is a comparatively small factor in proportion to Environment, which includes the home, the school, and all like influences which shape character. The Will, too often relegated by modern philosophers to an inferior place in man-making, or else completely subordinated to environmental or hereditary influences, is, nevertheless, worthy of considerable attention. Representing, as it does, Moral Purpose, the will stands out distinctively as the most significant if not the most fundamental human attribute.

Too long has it been assumed that education must be entirely "practical." Ideals are needed in education as elsewhere, and though they are illusive and most difficult to circumscribe and denote, the author has made a significant and effectual effort to express the newer idealism which is dominating the thought of advanced educators. The book is not entirely comprehensive. It is rather original and suggestive.

James, Edmund J. *The Origin of the Land Grant Act of 1862.* Pp. 139. Urbana: University of Illinois, 1910.

Janney, O. E. *The White Slave Traffic in America.* Pp. 201. New York: National Vigilance Committee, 1911.

The facts of the "White Slave Traffic" have become so well known to the

reading public that the author of this little volume attempts no more than to present them in a summarized, readable form. Many of the chapters include copious extracts from investigations, as for example chapter five on "The New York White Slave Grand Jury," which consists almost wholly of quotations.

Dr. Janney fully establishes the presence of the white slave traffic, and writes very suggestively of its causes, holding that the bad training of children, the new city environment, low wages, low standard amusements, employment agencies and immigration are primarily responsible for its existence. Dealing with the positive side of the problem, he suggests for the suppression of the traffic an international treaty, increased activity on the part of the National Vigilance Committee, a regulation of immigration, the elimination of politics from its connection with vice, the payment of living wages, and the provision of healthy recreation. The viewpoint is sane; the presentation virile.

Johnson, Rossiter. *A History of the War of Secession, 1861-1865.* Fifth Edition, Revised and Enlarged. Pp. xiv, 576. Price, \$2.00. New York: Wessels and Bissell Company, 1910.

The fiftieth anniversary of the beginning of the Civil War is an appropriate time for issuing another edition, the fifth, of this popular one-volume history of the war, first published nearly a quarter a century ago.

This work has made its appeal to the general public by reason of its concise, readable, and in general accurate account of the great struggle. The author has devoted the larger part of his space to the military rather than the civil history of this period, as is apparent from the fact that all but nine of the thirty-four chapters relate to military and naval operations. It is nevertheless true that he has paid more attention than is customary in strictly military histories to such topics as the causes of the war, the diplomatic relations, the progress of emancipation, the presidential campaigns, financial problems, the treatment of prisoners of war and the work of the Sanitary and Christian Commissions. The presentation of the campaigns and the description of battles, in language stripped of technical terms and intelligible to the layman, account for its popularity. This as well as the excellent literary style and the spirited and well balanced narrative are its chief claims for consideration.

The author has manifestly striven to be fair to both sides and to the prominent actors both civil and military, but the work is not free from bias. It is avowedly written from the Northern view point. The chapter on the cause of the war, sets forth in considerable detail the various phases of the slavery controversy but does not sufficiently emphasize the constitutional questions at issue and the devotion of the South to the doctrine of state sovereignty, and its relation to the slavery question.

The work is open to criticism chiefly on the score of omissions. In this revision no use has been made of the recent contributions to the social and economic history of the North, and scant attention is given either to the political or social condition of the South during the war.

Larned, J. N. *A Study of Greatness in Men.* Pp. 303. Price, \$1.25.

Boston: Houghton Mifflin Company, 1911.

The work of Galton, Pearson, Odin and their collaborators has called attention to the biologic factors involved in the problem of genius and to the possibilities of increasing the proportion of genius in the community. A distinctly different attitude is taken by the author, who emphasizes the qualities which constitute greatness rather than the factors which are involved in its creation. In a splendidly analytical introduction he discusses the three elements which make up greatness, (1) energy; (2) intellect; (3) moral purpose. Energy, men have in common with all animals. Intellect, while not a distinctively human quality, is largely confined to the human race, but moral purpose is so far as we know, an exclusively human attribute. If this analysis of the elements in genius is correct, the author is justified in holding that the test of human greatness is primarily moral purpose since moral purpose constitutes the one peculiarly human quality.

Following this introduction, Napoleon, Cromwell, Washington and Lincoln are discussed in turn and the elements which made for their prominence are indicated clearly and accurately. It is to be regretted that the author has not presented, in an effective summary, some conclusions which might justifiably have been added to the material contained in the introductory chapter.

Lieber, Francis. *Manual of Political Ethics.* Two vols. Pp. 931. Price, \$5.50. Philadelphia: J. B. Lippincott Company, 1911.

Francis Lieber is one of the great debts which America owes to Germany. Trained in German habits of thought he came to the United States and by the vigor of his works, *Manual of Political Ethics*, appearing in 1838-9 and *Civil Liberty and Self Government*, published in 1853, introduced a new point of view and method into American Political writing. Before his time American discussions were almost without exception propagandist and hence made no attempt at systematic study of the whole field of political science. He introduced German thoroughness of method, at least a partial adaptation of the point of view of the historical school and most important of all a philosophy entirely divorced from the ideas of social contract and natural right which up to that time had gone almost unquestioned among American political writers.

The "Manual of Political Ethics," is now reissued in a new printing of the second edition revised and edited by Theodore D. Woolsey. The two volumes are large octavo bound in green cloth, and on excellent paper. They will be a welcome addition to the library of every man in political science, and especially to those interested in political theory. Much of recent American political writing is tinged with the theories of Lieber and the next generation like the last, will doubtless continue to draw inspiration and guidance from his clear analysis.

MacCunn, John. *Six Radical Thinkers.* Pp. 268. Price, \$1.00. New York: Longmans, Green & Co., 1910.

In this volume the author has presented the ideas of several radical

thinkers, together with some criticism of their views, contrasting their philosophy with the beliefs which they opposed. Jeremy Bentham, the critic of things established who dared to hold the current doctrine of "natural rights" in contempt, and who dared to declare his philosophy of the "greatest happiness to the greatest number" which in law and politics made the final court of appeal the public good, is the subject of the author's first essay. The second essay is devoted to "The Utilitarian Optimism of J. S. Mill," an optimism supported neither by the belief in the benevolence of nature nor by the belief in the omnipotence of God, but fostered by his faith in the individual and in democracy. The remaining essays are devoted to Richard Cobden, the apostle of free trade and peace, who was victorious in his efforts to secure the abolition of the Corn Laws; to Thomas Carlyle, who opposed democracy and distrusted popular intelligence; to Mazzini who sought to make democracy religious; and finally, to "The Political Idealism of Thomas Hill Green."

One feels grateful to the writer for bringing together these ideas and criticisms but his service would have been still greater had he written an introduction in which he might have stated his purpose and thus given unity to the book.

Mackinder, H. J. *The Nations of the Modern World.* Pp. xvi, 319. Price, 2s. London: George Philip & Sons, 1911.

This little volume, the fourth in the author's series of elementary studies in geography, is a happy combination of geography and history. The narrative form is such that the book conveys a distinct impression of the significance of the leading modern countries. Statistics are noticeably absent, but interpretations of world-wide relations are abundant. Many excellent small maps and diagrams add greatly to the general usefulness of the book. Thus, by text and diagrams a clear comprehensive explanation of the situation in the Far East is presented in the space of only ten pages. Not a few entire volumes have failed to present this, and similar matter, in as satisfactory form. The book may be most heartily recommended as a reader for grade students of both geography and modern history.

Marriott, J. A. R. *English Political Institutions.* Pp. viii, 347. Oxford: Clarendon Press, 1910.

Few manuals compress within so small a space so much concrete information as is found in this interesting discussion of the frame of the government of England. The point of view is partly political, partly historical, an arrangement which in less skilful hands would make the book too sketchy, to be of value. There is no attempt to cover party organization in England, but the treatment of the crown, parliament and the judiciary is commendable. Local government is less satisfactorily treated in two short chapters. The latter portion of the book treats the relation of the colonies to the home country. One cannot help but feel that the space devoted to imperial relations might well have been given to a discussion of the institu-

tions of party control, which are surely quite as much a part of English politics as imperial affairs. The brief and concise character of the work makes it well adapted to use as a college text.

Marx, Karl. *A Contribution to the Critique of Political Economy.* Pp. 314. Price, \$1.00. Chicago: Charles Kerr & Company, 1911.

The publication of this volume, a reprint from the plates of an earlier American edition, will be welcomed by all students of Marxian Socialism. It was in this early piece of work, first published in 1859, that Marx briefly outlined those more important economic concepts, later elaborated in "Das Kapital," which to-day form the foundational theories of the socialist philosophy. It is doubtful if there exists a better statement of the theory of economic determinism than that which is found in the preface of this volume.

Masterman, C. F. G. *The Condition of England.* Pp. ix, 340. Price, 6s. London: Methuen & Company, Ltd., 1910.

The present conditions surrounding life in England form an absorbing topic in the hands of our author. After a discussion of the spirit of the people in which the low ideals of the nation are pointed out, the writer discusses at length the component elements of modern industry, the Conquerors; the Suburbans or middle class Englishmen; the Multitude, the great mass of wage and salary earners, and last of all the Prisoners, those who are subject to grinding poverty and denied legitimate opportunity. Contrasted with this picture of city life is that of the country where there is no social life at all, where city migration has left only the weak and feeble, and where men stand and wait like Mr. Micawber for something to turn up, and that failing, pass on wearily into another world. In conclusion, the author points out that in spite of the wonderful discoveries of science, society has far from realized its true possibilities. In spite of this fact there is on many sides an almost ludicrous "Illusion of Security" with which many a twentieth century Englishman satisfies the warnings of his better self.

McCarty, Dwight G. *The Territorial Governors of the Old Northwest.*

Pp. 210. Price, \$2.00. Iowa City: State Historical Society of Iowa, 1910. A more interesting group of men than the early territorial governors it would be hard to find. Impetuous, strong minded, courageous, they were as a rule—indeed success awaited no others, as is shown by the examples of Todd, in Illinois, and Hull, in Michigan. Indians, English and Spaniards, at first made their duties arduous and when these became less troublesome the bitter disputes of frontier communities furnished problems no less difficult to solve. Mr. McCarty's book is more than a series of biographies. It traces the development or perhaps more exactly, the decline of the powers of the territorial governors and the growth of the power of the elected assembly, in a way which makes the volume one in comparative government. The materials drawn upon in the preparation of the

monograph are well and accurately used but placing the citations at the end of the book, though it leaves the pages in more uniform style, deprives the reader of the advantage of having the references close at hand.

McPherson, Logan G. *Transportation in Europe*. Pp. iv, 285. Price, \$1.50.
New York: Henry Holt & Company, 1910.

This book is the result of the author's association with the National Waterways' Commission during its travels throughout Europe, and of considerable statistical research. One portion of the volume contains an interesting account of the historical development of the railways in Europe and Great Britain. Another explains the rate systems and tariffs of the various European railways. Still another discusses various railway methods of Europe and draws comparisons with American practices. An outline of the administrative machinery of the leading government railways of Europe, the effect of public operation on rates and its financial results are also given.

Several chapters deal chiefly with European waterways. The conclusions drawn by the author are generally opposed to the waterways, and will doubtless not receive the approval given to the author's views concerning historical and technical railway affairs. Certainly others with much the same evidence before them have arrived at different conclusions.

Montgomery, Harry E. *Christ's Social Remedies*. Pp. iii, 433. Price, \$1.25.
New York: G. P. Putnam's Sons, 1911.

When the author of this volume asks the question, "Was Christ a Socialist?" he foredooms himself to failure, since the concept of Christ's teachings, and of the meaning of socialism must vary with the individual and the era. Nevertheless, after propounding this impossible question, the author proceeds to analyze Marriage, Divorce, Crime, Wealth, Labor and Sabbath Observance in terms of the Gospels. In all cases he finds that the precept is in advance of the performance; that men have failed to fulfil the law as laid down in the New Testament, and that there is on every hand opportunity for a widespread revolution in our attitude toward social problems. As a remedy for these conditions the author proposes a re-establishment of the true Christian spirit. While neither fundamental nor conclusive, the book represents an interesting attempt to focus attention on modern social conditions.

Moore, John. *Meteorology, Practical and Applied*. Second Edition. Pp. xxvii, 492. New York: Rebman & Company, 1910.

This volume is really a thorough revision of a long popular English text. It has been brought up to date, to cover the great progress of meteorological science in recent years. A chapter on the "Meteorological Service," of Canada, has been provided for by reducing the space devoted to the United States Weather Bureau.

The plan of the book remains the same. Part I deals with the general aspects of the subject, physical properties and composition of the atmosphere. Part II covers in detail the many aspects of Practical Meteorology,

especially the use of instruments. Part III discusses climate and weather and Part IV treats briefly of some influence of season and weather on disease.

The second part is the most important section. It differs sharply from most of the texts by American authors in the amount of space devoted to descriptions of instruments and their use. Most of the instruments described are also pictured. These features give the book a peculiar value for the student or teacher of the subject. Almost of equal value is the comprehensive view of the work of the Weather Bureau and its importance. Numerous handy tables, copious illustrations and an elaborate index add further to the usefulness of the book as a text.

Morris, William A. *The Frankpledge System.* Pp. xiii, 194. Price, \$1.75. New York: Longmans, Green & Company, 1910.

Mundy, F. W. *The Earning Power of Railroads.* Pp. 492. Price, \$2.50. New York: Moody's Magazine, 1911.

F. W. Mundy's, "The Earning Power of Railroads," an excellent annual digest of railroad statistics, has appeared for 1911 in a new and better binding, and has again increased in size, due to the introduction of figures for railroads not hitherto treated and improved "notes." The volume furnishes in an admirable manner for ready reference purposes, statistics and facts relating to the earning power and securities of practically all the railroads in the United States, Canada, and Mexico. There are contained as usual, introductory chapters on the fundamental principles governing the determination of earning power. The clearness and the compactness of this volume, its detail and explanatory notes, the fact that it is prepared from the annual railroad reports by a member of a New York Stock Exchange firm familiar with the requirements for a work of this kind, make it a work of practical use and value.

Neumeister, W. *Die Natürlichen Grundlagen für die Eisenindustrie in Deutschland und in den Vereinigten Staaten.* Pp. 87. Price, 2m. Leipzig: Duncker & Humblot, 1910.

Osborn, H. F. *The Age of Mammals in Europe, Asia and North America.* Pp. xvii, 635. Price, \$4.50. New York: Macmillan Company, 1910.

Palsits, V. H. (Ed.) *Minutes of the Executive Council of the Province of New York, 1668-1673.* Vols. I and II. Pp. xii, 1192. Albany: State of New York, 1910.

The state historian of New York has admirably reproduced the "Minutes of the Executive Council of the Province of New York from 1668 to 1673," the years of the administration of Francis Lovelace. Volume I, pages 19 to 188, carefully, and apparently with complete accuracy, reproduces the minutes, while the remainder of volume I and all of volumes II and III are devoted to reprinting "Collateral and Illustrative Documents."

Thus far the first two volumes have been issued. The editor has written an introduction explaining the editorial methods adhered to and describing the difficulties encountered in locating some of the documents reproduced. The work cannot fail to be of real assistance to students of the early American colonial period.

Prince, Leon C. *The Sense and Nonsense of Christian Science.* Pp. vii, 143. Price, \$1.00. Boston: Gorham Press, 1911.

The object of this work is to cover the field of mental therapeutics from the standpoints of philosophy, religion and experience; to indicate many of the fallacies connected with this method of healing; and to enlarge the value of "a remedial force of proven efficiency." In discussing the Four Schools of Mental Healing, it is stated that Christian Science claims to destroy the belief in disease by the belief in health, for both are products of thought; that the New Thought is a "nebulous compound of agnosticism, pantheism, esoteric Buddhism and Christianity"; that Medical Psychotherapy is a "mind cure as administered by regularly qualified physicians"; and that the Emmanuel Movement is "psychotherapy in the hands of priests."

The author shows how the theory of knowledge according to idealism supports the idea of Christian Science "All is Infinite Mind," and that its error consists not in trying to destroy disease, but in calling it illusion. The worth and evil of these movements are presented, giving the reader a clearer view of their true value.

Rhett, R. G. *A Southern Banker's View of the Currency Question.* Pp. 34. Charleston, S. C.: Walker, Evans and Cogswell, 1910.

Richards, Ralph C. *Conservation of Men.* Pp. 90. Price, 50c. Chicago: By the author, 1910.

Robbins, E. Clyde. (compiled by). *Selected Articles on a Central Bank of the United States.* Pp. viii, 182. Price, \$1.00. Minneapolis: H. W. Wilson Company, 1910.

Roman, W. *Die Deutschen gewerblichen und kaufmännischen Fortbildungs und Fachschulen und die industriellen und kommerziellen Schulen in den Vereinigten Staaten von Nordamerika.* Pp. 214. Price, 5m. Leipzig: Duncker & Humblot, 1910.

Schreiner, Olive. *Woman and Labor.* Pp. 299. Price, \$1.25. New York: Frederick A. Stokes Company, 1911.

Woman's field, declares the author, is the whole field of modern activity. While she is pre-eminently fitted to fill a domestic position, performing the functions of wife and mother, and caring for the home, she is, in addition, fitted by physical and mental capacity to do some of the work of the world.

Throughout human history, women have been rendered parasitic by the dominance of masculine strength, but the Industrial Revolution, and the widespread education of the Nineteenth Century have freed them from this position. To-day woman must decide for herself what relation her life shall bear to the life of her fellow human beings. The book is popular rather than scientific, yet written in such a style as to recommend it to any student of the problem of woman's life and work. The author has made a unique contribution to the literature on woman's emancipation.

Singewald, Karl. *The Doctrine of Non-Liability of the State in the United States.* Pp. xx, 177. Baltimore: Johns Hopkins Press, 1910.

Though the title might include a discussion of the extent to which suits against the state are allowed and of the principles of law governing such permission to sue, Mr. Singewald does not touch this field. Nor does he treat the theory of state responsibility. The discussion is confined to the relation of the doctrine of non-suability to suits against public officers.

The thesis is that the courts have not adopted reasoning either logical or consistent in deciding these controversies. They have vacillated between holding that suits against officers may be suits against states and hence out of court jurisdiction—barring diversity of citizenship—and that though states may be nominally parties to the suits the courts may look back of the face of the record to the real parties of the suit—the New Hampshire versus the Louisiana doctrine. The conclusion is that a firmer ground would be to hold that the state, in a suit against its officers is not to be considered an indispensable party, nor should the distinction be made on the basis of nominal or real party but that an officer should be suable or not according to whether there is a separate ground of action against him.

Serring, Prof., and Others. *Mosseland und Westdeutsche Eisenindustrie.* Pp. xiii, 357. Price, 7m. Leipzig: Duncker & Humblot, 1910.

Smith, David W. *The Law Relating to the Rule of the Road at Sea.* Pp. xiv, 333. Glasgow: James Brown and Son, 1910.

The former latitude allowed to masters in deciding what was "the course of good seamanship" in deciding the routes of their vessels has disappeared with the growth of world commerce. Exact rules have become a necessity and agreements between the nations have made this the branch of international law in which the rules are most exact.

Though Mr. Smith's manual deals primarily with English cases it is therefore a guide to the practice of other nations who have adopted the rules of the Washington Marine Conference of 1888-9, and the supplements since added. The discussion is arranged in the form of comments on the legal interpretation given to the English regulations which carry out the rules of the Washington Conference. The citations are exhaustive and there are quotations from cases which adequately bring out the courts' interpretation of the rules. A number of careful diagrams help to make the meaning clear.

Spargo, John. *The Common Sense of Socialism.* Pp. 184. Price, \$1.00.
Chicago: Charles Kerr & Company, 1911.

This popular exposition of Socialism is now in its seventh edition. The author has followed the general scheme of Robert Blatchford's well-known little volume "Merrie England" and has addressed a series of letters to a fictitious Jonathan Edwards, of Pittsburg, in which he has explained in the simplest language the more important arguments advanced by the socialists. It is doubtful if a more acceptable volume for propaganda purposes has ever been published in the United States. Anything that Mr. Spargo writes concerning Socialism is not only well worth reading but better still it can always be accepted as authoritative.

Strachan, W. *A Digest of the Law of Trust Accounts.* Pp. 18. Bristol,
England: By the author, 1911.

Taylor, Griffith. *Australia: Physiographic and Economic.* Pp. 256. Oxford:
Clarendon Press, 1911.

Various government publications furnish sources of abundant statistical data concerning Australia, and several general treatises on the geography of the country are available, but this volume is the first satisfactory presentation of the intimate dependence of Australian industries on physical conditions. About half the book is devoted to physiography and climate and the natural regions of the country. The rest is devoted to the industries characteristic of the Australian environment. The author is especially to be praised for his treatment of the question of rainfall and water supply in its relation to these industries. The brief chapter summarizing the relation of environment and occupation in New South Wales also deserves special mention.

The most interest, however, is likely to be aroused by the concluding forecast of the future for Australia. On very fair bases of calculation the author estimates that 44 per cent of the country is so arid as to be practically useless: 17 per cent is suitable for tropical agriculture and 39 per cent for profitable white settlement, of which, however, nearly three-fourths is pastoral country. The future, therefore, appears to involve large dependence on pastoral industries and some policy by which these tropical sections, unsuited to white labor, may be developed. A much larger population seems certain.

Many good charts and diagrams show the distribution of both physical and economic features. It is a welcome contribution to economic geography.

Widtsoe, J. A. *Dry Farming.* Pp. xxii, 445. Price, \$1.50. New York:
Macmillan Company, 1911.

In connection with modern agriculture frequent mention of "dry farming" is encountered, but there is much indefiniteness about its real nature and possibilities. Hence this latest volume in the Rural Science Series is especially timely, and like the others in that series, it carries the weight of authority from the author's practical experiences.

The book covers the whole subject of carrying on agriculture, without irrigation, in regions of low rainfall. The climatic features requiring the adoption of this system of farming, the selection and management of soils, the choice of crops, the history of dry farming and its possibilities are all discussed extensively.

Some of the significant points made are that over three-fifths of the area of the country has a rainfall so low that dry farming methods are necessary, but that nearly one-fifth of the area is so arid that its reclamation by dry farming is not now feasible. At a conservative estimate, however, five hundred million acres (non-irrigable) having over ten inches of rain, are available for any farm crops, like wheat, rye, barley, alfalfa, and many others. Dry farming is clearly an immense question for the country, and the magnitude of the possibilities here revealed, make the book highly interesting.

Wood, Walter. *A Corner of Spain.* Pp. xii, 203. Price, \$2.50. New York: James Pott & Company, 1910.

To Englishmen, Galicia is historic ground. The Campaigns of the Napoleonic era have made portions of the country memorable in English military annals. Further its accessibility to the English tourist insures it a larger place in the mind of the average traveler than is accorded many of the more southern provinces. Mr. Wood writes interestingly of his travels in the by-ways of the province and though he seldom gets closer to the people than is the lot of the tourist his descriptions are minute, but never tiresome, and never burdened with the account of the inconveniences which a foreigner always experiences and often recounts. The illustrations are from photographs, sketches and paintings by Frank H. Mason. They are unusually Spanish. Anyone who wants a pleasant afternoon in northwest Spain will welcome this book.

REVIEWS

Addams, Jane. *Twenty Years at Hull House.* Pp. xvii, 462. Price, \$2.50. New York: Macmillan Company, 1910.

There could be no more stimulating book than Miss Addams' "Twenty Years at Hull House" for those who try in their thought and activity to translate ideals of democracy and righteousness into the routine of life. It is natural, perhaps, that such a book should have come from Miss Addams, for she has been conspicuously successful in making this translation. The book is not a treatise or a manual of settlement work, but a series of incidents in the story of a settlement and the personality which permeates it, and the spirit of its pages breathes the essential relation between life's religion, philosophy and routine. The widespread influence which Miss Addams and Hull House exert on the thought and social effort of the day is sure to be strengthened with those who through this book receive a glimpse of the social and spiritual development of both.

Social work in recent years has devoted itself conspicuously to the acquisition of facts regarding the human cost of social and economic processes. Inevitably, perhaps, investigation has had to precede interpretation, although the latter has not been lacking. Miss Addams' book, however, both in its story and in its atmosphere, never lets the reader lose sight of the human side of life, although it shows also the inevitable dependence of humanity upon economic environment. One feels, in reading, the power of the author's personality and the conviction grows that the spirit of democracy has found in Hull House and its leader one of its most significant expressions since Abraham Lincoln, for whose democracy Miss Addams expresses reverence.

The chapters on "Immigrants and Their Children," and on "Civic Co-operation" are perhaps typical of the book—the one revealing social problems as problems of individual lives and their possibilities; the other showing the practical inter-relation of all efforts for social betterment. The chapter on "Echoes from the Russian Revolution" cannot fail to be illuminating to Americans, especially to those who feel a sense of humiliation in the failure of our democracy at a most crucial point which was revealed during the anarchist excitement in Chicago, following the assassination of President McKinley—a failure which is most tellingly stated by Miss Addams. As Miss Addams believes, to the anarchist the treatment which he received was despotic in the extreme and at the opposite pole from the democracy of which we boast.

Those believers and workers in social betterment, who have been uneasy under a charge of irreligion in social work, will derive much satisfaction from this book. Miss Addams' statement of the steps which led her to ally herself with the church is impressive in its simplicity and sincerity. Even more impressive, however, is the spiritual atmosphere which pervades the whole volume. No reader whose religion is real could fail to feel that the influence of Hull House and its leader is a telling example of religion at work in the lives of men.

"Twenty Years at Hull House" has a many-sided value. It is difficult to conceive of any group of people, no matter what their interests, for whom it has no message. Its suggestive value is greatly enhanced by the illustrations.

PORTR. R. LEE.

Philadelphia.

Brown, John F. *The Training of Teachers for Secondary Schools in Germany and the United States.* Pp. x, 335. Price, \$1.25. New York: Macmillan Company, 1911.

By far the greater part of this volume is devoted to outlining the German system of training teachers of secondary schools with the avowed purpose of throwing light upon the problem of training American high school teachers. No part of the book is more interesting than the first chapter,

which describes the German Elementary and Higher Schools. In his treatment of the training of teachers, the author emphasizes the importance of uniting theory and practice; and he states that this is accomplished in Germany, largely, through the work of the "Seminarjahr." In Chapter XI a plan is outlined for providing a similar training for American teachers which calls for the co-operation of the high schools and the universities. This plan has good points and is certainly worthy of a trial.

With the exception of the above idea, which is constructive on the formal side, at least, the work is devoted largely to descriptions of existing educational machinery. The contribution of the author is the suggestion of a modification in the machinery and an outline of a plan for making the change. The weakness of the volume, from the standpoint of the reviewer, is the fact that educational machinery is treated as an end in itself, or, if means, means in relation to university instructors and high school teachers, means of affording them employment rather than means in the hands of teachers for the rendering of a larger social service. Consciousness is focussed upon teaching as a vocation which affords a man a sense of security, rather than upon teaching as means of developing young people, and contributing to their growth and efficiency in dealing with the problems of life. In short, the book is formal and academic in character, and it would seem to perpetuate the idea that the teaching profession dwells apart from the world behind "cloistered walls."

KATHARINE E. DOPP.

University of Chicago.

Bryce, James. *The American Commonwealth.* 2 vols. Pp. xxii, 1704.
Price, \$4.00. New York: Macmillan Company, 1910.

The appearance of a new edition of Bryce's "American Commonwealth" is an event of real importance to students of politics, especially when as thorough a revision has been undertaken as in this edition of 1910. The work now occupies an unique position in the literature dealing with the political institutions of the United States. In the secondary schools as well as in the universities, it has furnished the basis for elementary courses in civics as well as for the advanced courses in political science. No one author has ever exerted quite the same influence on the teaching of politics. The calm, dispassionate manner with which every important public question is discussed, the clear, concise analysis of the form and operation of our institutions give to this work an epoch-making place in the literature of political institutions. Mr. Bryce was one of the first to show us the wide gap existing between the form of our institutions and their operation. From the publication of the first edition of his work dates the tendency to study our institutions in their actual operation rather than as a mere framework of government.

In this new edition the same judicial and yet sympathetic tone prevails as in its predecessors. Mr. Bryce is keenly alive to the shortcomings of our

institutions, but with this recognition there is combined a strong faith in the ultimate success of the great experiment in democracy that is being carried on in the United States.

Throughout the work the data have been brought up-to-date. In addition, four new chapters have been added. In the first of these the author deals with the situation created by the great influx of immigration during recent years. He takes an extremely hopeful view of the situation, and is inclined to agree with those who think that the rapid assimilation of the foreign population will ultimately solve all the more serious problems which the influx of immigrants presents.

Another new chapter is entitled "Reflections on the Negro Problem." Here again the author discards or brushes aside the pessimistic forebodings of some recent writers, and dwells on the progress that has been made by the negro within recent years. In dealing with this as with many other national questions, Mr. Bryce looks forward rather than backward, concentrating attention on the favorable outcome, if the present rate of advance is maintained.

The question of direct legislation by the people, through the referendum, the recall and the initiative is the subject of another chapter, in which the author discusses the new views with reference to direct popular control that have recently been incorporated into state constitutions through constitutional amendments. The chapter limits itself, however, to a statement of facts without expressing any judgment on the significance or the outcome of the movement.

Mr. Bryce has also supplemented the chapter on universities, contained in the edition of 1903, in a new chapter which contains some further observations on the growth of the higher institutions of learning of the United States. The high esteem in which the author holds American institutions has not been in any way diminished by his observations of the last twenty years. He has been profoundly impressed with the increasing influence of the universities of the United States on the life of the nation. The description of university development during the last twenty years indicates how closely the author has kept in touch not merely with the facts of university development but with the spirit of university growth in the United States.

L. S. ROWE.

University of Pennsylvania.

Carlyle, R. W., and Carlyle, A. J. *A History of Mediaeval Political Theory in the West.* 2 vols. Price, \$3.50 each. New York: G. P. Putnam's Sons, 1900.

The work done on these two volumes extends over a decade. They are of unusually uniform grade throughout and form the best general summary in English of the disordered, formalistic and still formative period of political thought extending from the second century to the thirteenth. The work therefore hardly fits its title. It begins before the middle ages and the dis-

cussion does not go through them. The first volume in fact assumes the character of a review of the materials from which mediaeval political theory was built and the second because of the wealth of material, has covered only a part of the period up to the early seventeenth century, with which it was the first intention to deal. It is much to be hoped that a third volume may be published to deal with this later period when political thought was so largely in flux, but in which also most of the bases of our modern theories were present.

After a brief discussion of the political theories of Cicero and Seneca volume I is chiefly devoted to an analysis of the chief political concepts of the Roman lawyers and to the at times, halting and uncertain developments in the Christian church. The development of the theory of the law of nature in both Roman and Christian philosophy is emphasized though one feels that the influence of the praetor peregrinus has been slighted. The distinctions made by the great jurisconsults between *jus naturale*, *jus gentium*, *jus*, *jurisprudentia* and other legal concepts is treated in detail. The best worked out feature of the volume is the discussion of the process by which the Christian political philosophy became illiberal in its attitude toward slavery. The last chapters discuss the problems of kingly authority and church and state which were beginning to concentrate attention in the Carolingian period.

Volume II follows the same juristic concepts through to the thirteenth century giving especial emphasis to those elements of political theory which can be traced back to the Roman law. The attempt to base slavery, property, state authority, in fact all law on *jus naturale* is well depicted. Then a study is made of the influence of the canon law on political theory and developments. The discussion follows the same outline as already used in treating the influence of Roman law proper but one feels that limitations of space have at times made the discussion so brief as to sacrifice clearness.

Books of this sort are intended only for the advanced student of political theory and legal institutions. For them the authors have done an important service. Throughout the reliance has been upon sources rather than secondary materials, the result is that the treatment occasionally lacks completeness but this is because the work treats the political theory of the middle ages not political theory about the middle ages.

CHESTER LLOYD JONES.

University of Wisconsin.

Dodd, W. F. *The Revision and Amendment of State Constitutions.* Pp. xvii, 350. Price, \$2.00. Baltimore: Johns Hopkins Press, 1910.

Purely inductive studies such as this though they may not leave with the reader as clear an outline of theory as is possible under less exacting methods, are the basis of our understanding of practice and give a firm body of knowledge from which future experiments in constitution making may be begun. Stimson's analyses of our state and federal constitutions and Dealey's

"Our State Constitutions" have recently shown the value of exposition of this sort. Mr. Dodd's work is a similar study but in a narrower field and even more exhaustively worked out—in fact the work has a character almost encyclopedic and any review therefore fails to show the development of the subject matter.

The material falls into three parts: first, constitutional conventions. The experience of the twelve states adopting new constitutions between 1776-83 is reviewed. Even in this early period it is shown there was a tendency to differentiate between constitutions and statutes, a development which has been accentuated in our subsequent practice. This section closes with a discussion of the legal position of the constitutional convention in which the author leans toward the view that the legislature cannot bind the constitutional convention as to the scope of the revision of the old constitution which it is to undertake.

The second division, including more than half the book is an exhaustive discussion of the methods of amending constitutions by conventions and legislative action. It is brought out that the present tendency is strongly in favor of more flexible fundamental laws. The difficulties of putting the amendment before the people for adoption, how the fact of adoption is determined, the attitude of the courts toward new constitutional amendments, the overruling of courts by this means and questions of similar nature are thoroughly treated. The last chapter is devoted to a discussion of the working of the constitutional referendum, in which the facts bring out the seriousness of the objections that can be made to its use.

Mr. Dodd's book is not one for popular reading. It is essentially a reference work. Students will find it invaluable as a ready means of checking up on our constitutional practice.

CHESTER LLOYD JONES.

University of Wisconsin.

Graineau, Jean. *Les Actions De Travail.* Pp. xvi, 357. Price, 7 fr. Paris: Librairie du Recueil Sirey, 1910.

This book begins with a short appreciative preface, written by the eminent French economist, Professor Charles Gide, and deals with the most vexing problem of the participation by labor in the gains of industry. Accordingly a variety of methods of gain-sharing is presented and discussed. The first method of profit-sharing described is based upon the selection by employers of such employees to share in the profits of industry as meet certain requirements as to wages and position. A number of interesting illustrations are taken from both European and American sources, including the Bon Marché of Paris and the United States Steel Corporation. The working plan of the latter is very minutely outlined.

The author discusses the rights and duties of the share-holding laborer, methods of adjustment in the case of the death of laborers contributing toward the purchase of shares, voting powers of the workingman shareholder, the alienability of acquired shares and other pertinent questions. In

connection with some of these problems the profit-sharing plan of the South Metropolitan Gas Company of London receives considerable attention. These systems of co-partnership, the author conceives, will produce some very satisfactory results, in part at least, because of two motives which underlie the development of methods of profit sharing—the desire to lessen the tension of the conflict between capital and labor, and the hope of breaking ground for some form of co-operative production. On the other hand, profit sharing is often nothing more than a concession to the clamor of labor.

Co-operative production—aggressive action by laborers to divide the returns of industry among themselves—is discussed from various points of view. The economic validity of such enterprises is reviewed and their legal aspects also receive attention.

The review and criticism of the methods of profit and gain-sharing form an important part of the book. What benefits really accrue to labor? What are the inherent limitations of share holding? What of the future? These questions do not shatter the optimism of the writer of this book, who is very hopeful of the ultimate solution of the conflict between capital and labor. He welcomes experiments in the direction of the principles outlined and holds that the participation of the workingman in the profits of industry will go far toward allaying suspicions against capital and bringing about industrial peace.

GEORGE B. MANGOLD.

St. Louis, Mo.

Holcombe, A. N. *Public Ownership of Telephones on the Continent of Europe.* Pp. xx, 482. Price, \$2.00. Boston: Houghton, Mifflin Company, 1911.

This work is Volume 6 of the Harvard Economic Studies and is the result of an investigation begun "In the hope that a knowledge of European experience with telephones might aid in the solution of the public problem which the American community must face. . . ." It "has not been written to prove that any one mode of conducting the telephone business is the best for all countries and under all circumstances,"—but "to set forth without prejudice the results of European experience in the conduct of the business." With such modesty is introduced one of the most thorough and painstaking industrial studies that have appeared for many a day. For a work of such unusually high calibre, appreciation is the truer line.

Paradoxically enough, it is not only a very exhaustive, but also a most readable, survey of the very efficient and highly organized governmental telephone monopolies in Germany and Switzerland and of the less-efficiently organized public monopoly in France; together with the public systems of Italy, Austria, Hungary, Holland and Belgium. The public and private systems of Spain, Denmark, and the Scandinavian peninsula are also included. (Great Britain has been treated in a separate monograph by this same writer.)

The greater part of the work is naturally taken up with the service monopoly in Germany, Switzerland and France. The gradual development of

the telephone in these countries and the manner in which the public monopoly has been organized is very closely described. The interrelations of the Federal and Imperial Governments with the state and municipal authorities, and the co-operating public and commercial organizations who keep the standard of service up to meet public needs are fully discussed. The technical progress is noted in considerable detail, even to the fact that the German Government, profiting no doubt by the example of the private patent-monopoly industries, established in 1899 an experimental laboratory for research and invention. And the relations of the various governments with the armies of telephone employees, the differing policies used to keep them under control, and the method of regulating their political activities are all given a due and normal place in the study.

The very suggestive matter to be found in the many comparisons made freely throughout the work with reference to the conditions in the United States is thoroughly constructive in tone. Telephone rates and telephone development in a comparative sense are discussed with free recourse to illustrations in the United States.

The relations of the technical expert to the social and political organizations concerned are interpreted with an unusual accuracy and sympathy, while the final chapter upon "The Economy of Public Ownership" is not only of value as a summation along the lines of the author's experience but possesses decided interest from the nature of the comparisons made between the different nations with reference to their varying capacities for the conduct of public enterprises in an efficient and well organized manner. The work is rounded out by excellent general and bibliographical indices.

GEORGE D. HARTLEY.

Brooklyn, N. Y.

Kauffman, R. W. *The House of Bondage.* Pp. 480. Price, \$1.35. New York: Moffat, Yard & Co., 1911.

"The conditions with which the House of Bondage deals must be generally understood before they will be improved" writes John D. Rockefeller, Jr., after experience as foreman of the White Slave Traffic Grand Jury whose findings take the twelve last pages of this book.

As to the book's interest there cannot be two opinions. If false it would be interesting. Being true to life in its individual incidents, if somewhat misleading in its general impression, its unusual interest is enhanced by the fact that it is almost the only discussion of the social evil so dressed and so endorsed that it is possible to have it on one's desk.

As to the book's influence there can be and are several diverse opinions. So convinced of its educational value is Mr. Rockefeller that he has sent copies to a large number of shapers of public opinion, particularly to educators. I heard a city official of vast responsibility say that it was "one of the most helpful books ever written." While welcoming it as one of many much needed efforts to "make the whole nation think," I have regretted several elements in it and frankly question whether its net result is to make us see

more truthfully either the social evil and traffic in white slaves or their remedies.

It puts into the life of one country girl typical experiences of a great number of girls who go by different routes to lives of shame. The majority of readers will probably gain the impression that the beginning of prostitution is forced detention; that it is so hard as not to be worth while for fallen women really desiring it, to reinstate themselves as honest and respectable wage earners; that less is done than is being done to prevent the fall and to redeem the fallen; that once having entered on "the life" it is but a matter of three or five years when "youth, hope, purity, strength, beauty, the ability to work, even lust and hate . . . will be dead beyond possibility of resurrection;" that the wages of this particular sin is certain death.

Yet the more discriminating reader will be impressed with the fact that "Mary," who for fiction purposes is the composite white slave, is surrounded from beginning to end with men and women who have just as many reasons for being unhappy, yet who for some reason use their contact with vice as a stepping stone to the lucrative business of "Madame," to preferment in department stores or to political advancement.

I know of no other place where the student of sociology, the public school teacher charged with giving right social standards to boys and girls, editors and ministers who have occasion to comment upon the social evil, business men tempted to pay starvation wages, men and women still dazzled by the so-called Bohemian life of great cities, can get so vivid a picture of the daily routine of so-called fallen women. Yet in spite of this service I believe the book leads away from rather than toward the constructive work that must be done in our great cities to reduce the social evil and other evils just as truly social of which it is but one expression. The alliance of the police department with general inefficiency is worse than its alliance with the social evil. To legalize unsanitary and unjust working conditions is worse than to legalize and regulate the social evil. To traffic in untruths about social conditions, philanthropic effort, obligation of the rich to the poor and of the strong to the weak is worse than to traffic in white slaves. To try to cure the social evil by no matter how intelligent and persistent methods concentrated on it is certain to fizzle if we fail to deal intelligently and efficiently with the more comprehensive agencies of civilization of which the white slave traffic represents but one of many breakdowns.

The "House of Bondage," the Rockefeller Grand Jury presentment, Clifford G. Roe's book "Panders and Their White Slaves" and the report of the Vice Commission of Chicago all fail in my judgment to state truly and to emphasize the other ninety-five per cent of the police department's work, the other ninety-five per cent of the health department's work and the other ninety-five per cent of the public's obligation to have facts on which to base government action. So long as philanthropists, educators and social workers feel that unpaid volunteer service is better than paid public service; that schools are too good to be in politics; that government business must always be incompetent; that it is justifiable to give more thought to fractions of problems represented by private agencies than to the one hundred per cent

of these problems assumed by government, so long will there be soil for nourishing the white slave traffic. But even if this judgment is correct, it does not subtract from the interest and possible temporary helpfulness of "The House of Bondage."

WILLIAM H. ALLEN.

New York City.

Kennan, K. K. *Income Taxation.* Pp. viii, 347. Price, \$3.50. Milwaukee: Burdick & Allen, 1910.

The author's purpose has been to prepare a book which would deal with the material relating to the income tax in the different countries of the world. The task is a difficult one if carried out by a thoroughly scientific and scholarly method, but the author has followed the method of paraphrasing the law, which forces the reader to be content with references to articles, reports and secondary sources rather than the actual law upon the points under discussion. This leaves in the mind of the reader a sense of uncertainty joined with a feeling that the author did not have, in the majority of cases, the full sources for his study. This feeling is increased rather than lessened by the chapters on definitions at the opening of the book and the summary at the close. In both the reader is impressed with the frankness of the author, but not with his clearness of conviction. These chapters suffer by comparison with the recent volume of Suret on "Theorie de l'Import Progressive."

To close this brief summary without a further statement would be unfair to the author. To the man seeking material which will give him a general outline of what has been done in the field of the income tax, as well as enable him to reach some conclusion, the book has value, but for the student who is looking for the text and citations of the law, as well as the most recent figures (1908 is the latest), the volume will prove something of a disappointment.

FRANK L. McVEY.

University of North Dakota.

Le Rossignol, J. E., and Stewart, W. D. *State Socialism in New Zealand.* Pp. xi, 311. Price, \$1.50. New York: T. Y. Crowell & Co., 1911.

For years both the advocates and the opponents of the extension of governmental activities have looked upon New Zealand as a sort of social betterment experimental station, and it has been the experience of that country which has supplied the data for a considerable portion of our literature dealing with the success or failure of certain social reform measures. Students have been loath to accept the extravagant and partisan statements of the various authors, and have continued to hope that some day a reliable and unprejudiced study of the politico-economic conditions existing in that country might be made by a competent investigator. The closest approximation to that ideal is the lately published "State Socialism in New Zealand" by Prof. J. E. Le Rossignol of the Department of Economics at the University of Denver and Mr. W. D. Stewart, a barrister of Dunedin, New Zealand.

The field covered by the authors includes almost all of the governmental activities of this little British colony. The subjects of land tenure, land monopoly, roads and railways, land and income taxation, state life and fire insurance, old age pensions arbitration, strikes, wages and the standard of living and the public service are in turn discussed.

In dealing with the question of land reform the authors affirm that the government has been justified in its efforts to break up the great estate and to help the small farmers in every way, although it has necessitated the expenditure of a vast amount of money. An interesting consequence of this apparently socialistic legislation is that it is "producing results directly opposed to Socialism by converting a lot of dissatisfied people into staunch upholders of private ownership of land and other forms of private property" who are breaking away from their former allies, the working people of the cities.

The writers found that government workers have frequently been accused of practising the "government stroke," while the railroads great difficulty has been experienced in getting good men when needed and in getting rid of those who are inefficient. The lack of encouragement to inventors and other able men by promotion and advances in salary, the lack of initiative on the part of the managers, the lack of up-to-date appliances in certain lines of work were also noted in connection with the railroad shops. The influence of politics in the management of the railways is described in the following terms: "The people in every part of the country demanded railways, formed associations for the purpose of securing them, elected members to parliament pledged to do their utmost to that end; and the government unable to resist the pressure of public opinion, borrowed as much as it could and built short, unprofitable bits of lines without counting the cost." The practice of granting railway concessions to purchase votes "has done great harm in the past and will greatly retard future development of the Dominion unless the government sternly sets its face against the political control of the railways and toward the establishment of sound financial principles in every part of the administration. Indeed the financial failure of the railways has been one of the chief causes of their slow growth during the past thirty years." Still, the authors conclude that the people may do well rather to bear the ills they have than fly to others which might come with the sale or leasing of the governmental lines to private parties.

The present position of the State Life Insurance Department is condemned as being very unsatisfactory.

Of more than usual interest to the students of the labor situation in New Zealand is the declaration that "It is no easy matter to show that compulsory arbitration has greatly benefited the workers of the dominion. Sweating has been abolished, but it is a question whether it would not have disappeared in the years of prosperity without the help of the arbitration court. Strikes have been prevented, but the country never suffered much from strikes, and it is probable that the workers might have gained as much or more by dealing directly with their employers as by the mediation of the arbitration court. As to wages, it is generally admitted that they have not increased more than the cost of living."

The general conclusion of the authors is thus summarized "As to state insurance, state ownership of coal mines, and other forms of state trading, while their utility is questionable, they cannot be shown to have done much harm; and if in the future they are conducted on sound financial principles they will not drive private enterprises from the field, but will do only a part of the business and operate as a check upon the fixing of extortionate prices by private combinations of capitalists. The experience of New Zealand shows that when the state conducts business on sound financial principles, private enterprises can more than hold their own. The only danger is that the government under pressure of public opinion may sell products and services at less than cost, ruin private business and establish monopolies in these and other fields of production. There is no general demand for the further extension of governmental functions; many people think that it would be well to wait until the success of the various state experiments is assured before trying more."

While the conclusions arrived at do not lead the reader to feel that the authors have been continually guided by the spirit of impartiality and a desire to judge matters in an unprejudiced manner, still the work for the most part is very acceptable and will partially fill a need long felt by students of social reform. The volume would have been greatly improved had it been more carefully edited and proof read and had the references been placed in footnotes rather than in the body of the text.

IRA B. CROSS.

Leland Stanford University.

Monroe, Paul. *A Cyclopedia of Education*, Vol. I. Pp. xiii, 654. Price, \$5.00. New York: Macmillan Company, 1911.

An adequate cyclopedia of education in English has long been desired, and more than once proposed to publishers, but heretofore the difficulty of financing such an enterprise has seemed to them insuperable. Now, however, there is practical certainty that the cyclopedia will be an entire financial success.

There are fifteen departmental editors, headed by U. S. Commissioner Brown. One hundred and twenty-eight well-known men and women have contributed to the present volume, among whom are J. R. Angell, H. T. Bailey, John Burnet, Paul Carus, John Dewey, G. S. Hall, Joseph Jastrow, J. W. Jenks, Helen Keller, W. B. Pillsbury, David Eugene Smith, G. M. Whipple.

The articles show a just distribution of emphasis; an educational treatment of every topic (especially noticeable in the biographies), and a freshness and up-to-date character, not likely to be found in new editions of old cyclopedias.

An illustration will show the character of the work, for example, under the general topic of *Aesthetic Education*. Professor A. L. Jones has a six-column account of the history of aesthetics in which the contributions of Plato, Aristotle, Lessing, Kant, Schiller, Hegel and others are concisely given. John Dewey opens up the topic "Art in Education" with a three-column analy-

sis of the subject which exhibits its fundamental principles. James P. Haney continues with a historical account of "Art in Schools" in this and other countries. Arthur A. Dow treats of "Methods of Teaching Art," contrasting the older "academic," with the newer "structural" method. Under the title "Art Schools and Art Instruction," Irene Sargent shows what these are in Europe, while Florence Levy discusses the same subject in the United States.

All these articles give a fairly luminous account of the topic in hand, while the accompanying bibliographies invite to further study.

David Eugene Smith's articles on "Arithmetic and Algebra" are particularly satisfying, since they have historical perspective and yet reflect the best present practice. Much the same may be said of the articles on "Apprenticeship in Education," "Agricultural Education," Henderson's treatment of "Apperception," and many others.

The accounts of educational systems and methods in foreign countries, Belgium for example, are graphic and sufficiently complete, while the whole volume is adorned by many fine half-tones.

The reader can here measure up his ideals and achievements in each aspect of education by the best that has been said and done, so that the whole will be a necessity to each person and institution that proposes to keep abreast of the truest progress in education.

CHARLES DEGARMO.

Cornell University.

Orbaan, J. A. F. *Sixtine Rome.* Pp. 225. London: Constable & Co., 1910.

The title of this book is somewhat enigmatic. It is really a description of the building operations and plans for the improvement of Rome carried out by the great Pope Sixtus V, who ruled and reconstructed the eternal city during the years 1585 to 1590. That so short a period as five years left so strong an impress and one still so clearly visible in Rome is irrefutable testimony to the vigor of this ruler. An aqueduct rivalling those of imperial antiquity in length, abundance of water, and number of the fountains it supplies, a new street leading far across the city and into the suburbs, the Vatican Library, a whole quarter of Rome, the present form of the Church of Santa Maria Maggiore, the Sixtine Chapel, with its carvings, the dome of St. Peter's, the re-erection of the Egyptian obelisk in the square, the re-establishing of the column of Aurelian, and the fortification of the harbor of Civita Vecchia are only the most conspicuous and the most permanent of the material works of these busy five years. Sixtus applied the same vigor to the punishment of the outlaws that infested the Campagna and of evildoers in the city, and kept the whole college of cardinals disturbed by his restless energy. The engineer and builder, Domenico Fontana, was the right-hand man of the Pope in all this work. He was equipped with all the science of the day, aided by a small army of workmen, pulling down old buildings in some parts of the city and erecting new ones, and drawing

from the papal treasury large sums for which afterward he, instead of his master was held responsible. Fontana's description of the moving of the great obelisk is one of the most interesting stories in sixteenth century literature. He had been a friend of Sixtus when the architect was only a mason's boy and the future Pope was merely Felice Peretti, who had himself been a farmer's boy.

The style of this book is somewhat fanciful; whether that is an addition to its interest or a diminution of it is a question of taste. But its information is solid, its statements careful, and its description lucid. Through it all, moreover, runs the charm of Italy, the mingled influence of its centuries of varied history, its great works of science, art, learning, and thought; its sun, skies, mountains and trees; its ruined monuments and its modern regeneration.

E. P. CHEYNEY.

University of Pennsylvania.

Robinson, E. V. *Commercial Geography.* Pp. lix, 455. Price, \$1.25.
Chicago: Rand McNally & Co., 1910.

The author defines clearly in the preface his conception of commercial geography as to "its purpose, its scope and its appropriate method of treatment." That he approaches the subject from a new viewpoint will be obvious from the following extracts. "Commercial geography is the study of the localization of industries;" "Commercial geography has in general no concern with the machinery of exchange or the technique of trade, nor with industrial processes, unless some of these become factors in the localization of industry." In our opinion, these restrictions rule out some material essential for the most constructive adaptation of the subject in advanced courses. It is difficult to conceive where the "machinery of exchange" and "the technique of trade" would find an appropriate place if they have no place in a geographic study of the commerce necessitating the exchange facilities.

The size, arrangement and content of the book indicate that it was designed for use in high schools and colleges offering a one or a half-year course in commercial geography. Part I is a discussion of "The Growth and Factors of Commerce" and treats in a very interesting and suggestive way the historical beginnings and growth of commerce; the influence of climate, soil, geographic situation and topography; how commerce depends on economic forces; transportation; and raw materials of commerce. Part II is a regional study of the geography and commerce of "Continents and Countries," beginning with the United States. The countries, or the geographic divisions of the country, are discussed with reference to geographic controls, industries, transportation and commerce. Part III is an appendix of statistical tables and a conveniently arranged index. The illustrations are well selected and executed, and the ninety-two maps constitute a representative series so valuable to teachers and students as to deserve special mention.

The text is supplemented by a pamphlet of *problems, topics, and a classified bibliography*, which the teacher can either use as a guide for elaborating the subject, or place in the hands of the students.

Though many geographers will find difficulty in accepting the author's restrictions on the scope of commercial geography as expressed in the preface, they are well taken for a book of this type and grade. As a whole it is a highly satisfactory text-book, comparing favorably with the best which have been previously published.

G. T. SURFACE.

Yale University.

Smart, W. *Economic Annals of the Nineteenth Century, 1801-1820.* Pp. xxxvi, 778. Price, \$6.50. New York: Macmillan Company, 1910.

This volume is a most useful addition to the literature of the economic history of Great Britain. In his work as a member of the Royal Commission on the Poor Laws and the Relief of Distress, Professor Smart came to realize the imperative need of more detailed information concerning "the history of the working world," in order to understand why poverty has existed and still persists. He decided to use "the remainder of his years to help on the science" of economics by writing the annals of the economic history of England during the nineteenth century.

The author's materials are drawn mainly from "Hansard's Debates" which have evidently been studied from cover to cover. The other fruitful sources of information were the "innumerable reports of committees and commissions." In making his record of economic events in England during the first twenty years of the century Professor Smart has given prominence to three questions—protection, the "cyclical movement" (ebb and flow of prosperity), and taxation.

An English economist, using parliamentary debates for his material, would naturally give much space, in an economic annals of the years 1800 to 1820, to Adam Smith's doctrines and to the agitation for free trade. It is probable that the industrial and social progress of the United Kingdom during those years was less influenced by fiscal legislation than economists are wont to assume; but the burdens placed upon industry by taxation of all kind during the prolonged period of the Napoleonic wars were a serious handicap to business and an account of the economic history of those years must needs pay special attention to the theories and practice of taxation.

The attention of public men and writers in England from 1800 to 1815 was not so much upon domestic economic affairs as upon the life and death struggle against Napoleon. For this reason, as Professor Smart says, "the domestic annals were very scanty—nobody apparently thinking it worth while to record the humbler events at home when the destiny of Europe was being determined on the continent. It is but natural that this first volume of the nineteenth century economic annals should devote much space to England's share in the war against Napoleon. That war meant heavy taxes, high prices, and curtailed markets. "In a sense, the history of the war during

these years is the history of England." The author, however, has kept to the path of economic history, and has apportioned his space fairly as between domestic and international economic affairs.

EMORY R. JOHNSON.

Turner, John K. *Barbarous Mexico.* Pp. 340. Price, \$1.50. Chicago: Charles H. Kerr & Co., 1911

It is exceedingly difficult to pass judgment on this book without entering with considerable detail into the social and political development of Mexico during the last three decades. The work occupies about the same relation to the conditions of social progress in Mexico as Lawson's book on "Frenzied Finance" toward the history of American economic and financial growth. If it were possible to make a composite book of the works of Creelman, Godoy and Turner we would approach an accurate estimate of the present situation. Unfortunately for Mexico, Mr. Turner found himself compelled to write a series of Mexican articles which would not only arouse some interest on the part of those who were studying Latin-American affairs, but which would also attract the attention of the general public. He has, therefore, done for Mexican social conditions what Lawson did for American finance, namely, to throw the high-lights on the shortcomings of the present situation. In so doing he has created a distinctly false impression as to the present condition in Mexico. It would be useless to enter into a controversy with the author with reference to the accuracy of his facts. Even if true, the impression which he creates in the reader's mind would be none the less false. He fails to place his descriptions in their proper settings or perspective.

The most superficial study of Mexican history and present conditions must convince one that in a country in which so large a percentage of the population is illiterate, with a relatively low standard of living, it is physically impossible for the government to prevent abuses on the large landed estates in which the agricultural laborer finds himself completely at the mercy of the land owner, or, to be more correct, at the mercy of superintendents and managers. It would require an administrative organization far more elaborate than any American or European country has as yet developed in order adequately to protect the agricultural laborers against the oppressive methods of the less enlightened employers.

No one will deny that Mexico has many and exceedingly difficult problems to deal with, but it is unfortunate here in the United States, where there still prevails such widespread ignorance concerning the real conditions existing in Mexico, that works purporting to be a fair picture should be of so misleading a character.

L. S. ROWE.

University of Pennsylvania.

Watson, D. K. *The Constitution of the United States.* Two vols. Pp. xlvi, 1,959. Price, \$12.00. Chicago: Callaghan Company, 1910.

In one way this comprehensive two-volume work will be found a decided improvement over the usual treatise on constitutional law. In the discussion of the various clauses of our fundamental law, the historical bases, so far as they appear in the proceedings of the convention, are reviewed. This gives a much better background for judging the intent of the framers of the constitution than is possible when only the words of the clauses and the logic of the thought and arrangement are considered. The value of this method can hardly be over-emphasized. It has not, however, been fully appreciated by Mr. Watson. There are few historical references to the period before the constitutional convention itself. The use of the contemporary discussions of the meaning of the constitution which appeared at the time of the adoption of the constitution and in the formative period following is restricted. Failure to give a picture of the constitution as it appeared to the generation which adopted it can hardly be justified in a book which aims to cover, as does this, the "history, application and construction" of the document.

There is a failure also to outline the historical growth of the constitution since its adoption, by which it has become in fact if not in form a scheme of government which in many respects would hardly be recognized by the fathers. The history of the constitution, in a word, cannot be confined to the period of the convention, it goes back far before the Revolution and it did not stop with the adoption of the constitution or with its amendments.

History of the constitution should also include more than judicial decisions. In the discussion of the taxing power, it hardly seems that the facts concerning the Civil War income tax and the argument supporting it should be overlooked. It is not true that representatives to congress have never been elected by territory which has not been given the status of "territory" in the popular sense of that term. The omission of consideration of the "new problems relating to constitutional government (which) are demanding consideration" confines the discussion of the insular cases to a little over five pages. Limitations similar to these are met throughout the volumes.

In arrangement the order given in the constitution is followed. The result especially in the discussion of the amendments is repetition, and to one who fails to bring together the discussion of the parts of the constitution which are connected in thought, confusion.

In spite of these defects, which refer to the arrangement and choice of materials, Mr. Watson's work is valuable. The discussion is scholarly and the historical material within the limitations mentioned is well used. There is a well selected table of cases and a fair index.

CHESTER LLOYD JONES.

University of Wisconsin.

Weale, B. L. P. *The Conflict of Color.* Pp. ix, 341. Price, \$2.00. New York: Macmillan Company, 1910.

This new volume by the author of "The Reshaping of the Far East" might

well have been named "The Reshaping of the World." Its central thesis is that the old European-classic period of world history is ending and that in place of its problems are arising the problems of race conflict in the world area. The five chapters deal with the great ethno-geographical regions of the earth: "How Color Divides the World To-day," "The Yellow World of Eastern Asia," "The Brown World of the Middle East and the Near East," "The Black Problem," and "General Conclusions."

Two fundamental facts account for the changing orders of things. The white races are increasing more slowly than the colored and will soon be overborne by mere numbers in Asia and Africa. The colored races are also gaining self-consciousness and self-assertion sufficient to spur them on to aspire to independence—an independence lost to the whites while they were still "undrilled." Political boundaries are thus being obscured by ethnic boundaries, and future frontier-rectification must occur in those regions where the colored races find their brethren within the borders of white states. The European colonial powers are meanwhile handicapped because they do not present a united front against the greater and growing masses of the colored in the outlying regions. Weale nowhere presents any evidence, however, that there exists a tendency toward a general solidarity among the non-white groups.

White civilization is not adapted to the colored races, and consequently, its institutions would not flourish in either Asia or Africa. For instance, Christianity is not suited to the Asiatic type of mind, nor is it so well calculated as is Mohammedanism to develop manliness among the blacks of Africa. Since Japan's victory over Russia the leadership of the yellow races has fallen to her, and this means the growth of a racial solidarity independent of and ultimately hostile to the whites. In India, England can no longer rule by the old methods. It is interesting to note that the author believes that for the future it will be soldiers or sailors, or better still scientists, rather than classically trained scholars, who will be best suited for Indian administration.

The black race, which has contributed practically nothing to the world's culture, is capable of indefinite multiplication, now that tribal wars and the slave trade have been stopped. Unadapted as the author believes Christianity to be for the African, the Christianization of that continent is nevertheless the only hope for the future of the white race there, since this alone will keep the natives submissive to white rule.

It is, then, the arrested birth-rate of the whites which is bringing on this crisis. France, for instance, is rapidly dropping out of the running as a colonial power for this reason. But Weale seems to forget that a similar decline in fecundity is likely to take place among the colored races themselves when subjected to the same social and economic conditions. His estimates of probable future population must be checked in the light of this most certain change. He also fails to allow for the other social changes that must follow among outlying races when they have absorbed some of the chief elements of white culture. Most of his conclusions are based on prophecy, and it is therefore strange that he should not have been warned

by the instance of Japan's rapid transformation. The immediate effects of this transformation form the basis of his prognostications as to the future of eastern Asia, but it is unsafe to imagine that the immediate reaction will be permanent.

If the book has something of an alarmist note, it nevertheless calls attention to certain real changes in the world's center of gravity that are of vast import. Great forces, hitherto imperfectly organized and therefore unrecognized, are bringing the old antagonism between east and west to an acute stage. Weale is more at home in handling the problems of far eastern politics than in dealing with the other aspects of his subject. His use of historical materials is not particularly happy, and his equipment of notes is often ponderous and not always pertinent.

ULYSSES G. WEATHERLY.

University of Indiana.

Wilcox, Delos F. *Great Cities in America.* Pp. xi, 426. Price, \$1.25. New York: Macmillan Company, 1910.

Dr. Wilcox's latest volume "Great Cities in America" (one of Macmillan's Citizens' Library Series) shows him at his best as a civic pathologist. With great detail he lays bare the faults and shortcomings of Washington, New York, Chicago, Philadelphia, St. Louis and Boston. The author's attitude towards the cities which he describes can best be defined by quoting from what he has to say on the subject of the reputation of American cities:

"What Mr. Bryce describes as the 'one conspicuous failure' of American government has become only less conspicuous during the twenty years since he wrote 'The American Commonwealth' by a growing realization of corruption, extravagance and inefficiency in other branches of government. New York City stands in the fame of the world for Tammany Hall, enormous indebtedness, and corporation domination. Chicago, though its reputation has somewhat improved of late, has not yet erased from its scroll of fame the words 'Yerkes,' 'grey wolves' and 'Satan's invisible world displayed.' Philadelphia is known as 'corrupt but contented,' the most shameless in its infamy of all cities of the western world. St. Louis is known as a city where the boodle aldermen trafficked in the public treasures until bribery was regarded as a venial offence. Boston, proud of its culture, is nevertheless known as the city whose petty graft and multiplication of ward heelers has made its government more expensive than that of any other city in the Christian world."

Dr. Wilcox ignores or greatly underestimates the great forces that are at work in every American city making for higher standards of civic conduct and for efficiency and effectiveness in administration,—factors which have grown so mightily in the last fifteen years that Mr. Bryce, perhaps the most dispassionate and discriminating critic America has ever had, in his recent New York City Club speech was impelled to speak with hopefulness concerning the outlook for American cities.

Those who are interested in the pathology of the subject rather than the

preventive and remedial side will find the present volume suggestive. Those, however, who are interested in the forward movements which are at work in municipal life will find very little to help or interest them.

CLINTON ROGERS WOODRUFF.

Philadelphia.

Woollen, W. W., and Thornton, W. W. *The Law Relating to the Traffic in Intoxicating Liquors and Drunkenness.* Two vols. Pp. ccclxxiii, 2,395. Price, \$13.50. Cincinnati: W. H. Anderson Company, 1910.

In their preface the authors state that the subject of Intoxicating Liquors has not been systematically treated since 1892, in a work devoted entirely to this matter. In the interval the legislatures have been busy regulating the liquor traffic, and the number of reported cases has doubled. The work under review contains nearly 27,000 citations, and seems to be a well-nigh exhaustive treatise of the decisions.

Of course, the authors could not be expected, even within the generous limits of their work, to set forth at length the statutes of the various states relative to intoxicating liquors. Moreover, no attempt is made to discuss the United States revenue laws and regulations for the taxation of intoxicating liquors. But it is remarkable how thoroughly the extensive field to which the authors have devoted themselves has been explored and mapped out.

Exception must be taken to the statement in the preface that apparently "all questions that can possibly be raised concerning the traffic and control of intoxicating liquors have been presented to the courts for their consideration." The multitude of decisions already handed down which is alleged as a reason for the statement just quoted, would rather indicate that our courts will have many more such cases in the future. In the first place, the legislation on the subject has by no means taken final shape. The wisdom of those who seek to minimize the horrors of the liquor traffic mingled with the blind fanaticism of many of our worthy Prohibitionists and the crude ignorance of some of our legislative reformers often results in the distillation of a blended legal product, in the form of a statute, which puzzles the lawyers and judges as much as the question "What is blended whiskey?" puzzled the authorities at Washington a year ago. In the second place, new expedients to evade the law are forever being devised, with greater or less success, and all these bring new points before our courts for solution.

The work begins with a study of the definitions of various names used to designate liquors, including a variety of "bitters" and other similar compounds which enjoy a flourishing sale in parts of the Union where alcohol is esteemed for its medicinal properties. Much space is devoted to the constitutionality of statutes either forbidding or regulating the liquor traffic, and to the "original package" and other cases dealing with interstate commerce. The subject of licenses in its various phases is treated at length.

No little entertainment can be derived from a study of some of the decisions dealing with attempts to evade the law in prohibition districts. The topics, "Druggists' Prescriptions," so-called "Gifts of Liquor," and "Clubs,"

ostensibly social, but really organized for drinking purposes, are brimful of interest.

Attention should be directed to the discussion of the adulteration of liquors under the state laws and under the national pure food and drugs act, as well as to many other matters of which space forbids mention here. The author's treatment of the right (existing in some states) to recover damages against a saloonkeeper for improperly furnishing liquor to a known drunkard merits special praise. The chapters on drunkenness in connection with wills, divorce, negligence and life insurance are also to be commended.

JOHN J. SULLIVAN.

University of Pennsylvania.

